Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102
	)	
Petition for Declaratory Ruling Regarding Area Code Relief Plan for Area Codes 508 and 617, filed by the Massachusetts Department of Public Utilities	)	NSD-L-96-15
	)	
New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)	)	NSD File No. L-98-03

THIRD ORDER ON RECONSIDERATION OF SECOND REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER

Adopted: September 13, 1999 Released: October 21, 1999

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTIONI. INTRODUCTIONI. INTRODUCTION

1. In amending the Communications Act of 1934[1] by passing the Telecommunications Act of 1996,[2] Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[3] On August 8, 1996, the Commission sought to implement this policy by adopting and releasing the *Local Competition Second Report and Order*,[4] in which the Commission promulgated rules and policies to require incumbent local exchange carriers (LECs) to provide competitors with access to the incumbent LECs' networks sufficient to create a competitively neutral playing field for new entrants. Among these rules, the Commission required incumbent LECs to provide competitors with prompt notification of network changes and with nondiscriminatory access to directory assistance and directory listing to ensure that customers of all LECs would have access to accurate directory assistance information. The Commission also required incumbent LECs to provide competitors with "dialing parity," which would allow a customer to use the carrier of his or her choice for local and toll calls without having to dial extra digits to reach that carrier. Finally, the Commission adopted rules to ensure that telephone numbers would be distributed and area code relief implemented in a competitively neutral manner.

2. On July 19, 1999, the Commission released an order denying the petition for reconsideration of the *Local Competition Second Report and Order* filed by Beehive Telephone Company, Inc.[5] Subsequently, on September 9, 1999, the Commission released an order resolving petitions for reconsideration of the *Local Competition Second Report and Order*'s rules implementing the requirement of section 251(b)(3)[6] that LECs provide non-discriminatory access to

[1] 47 U.S.C. §§ 151 *et seq.* ("Communications Act" or "the Act").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

[3] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Joint Explanatory Statement).

[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan, *Second Report and Order, and Memorandum Opinion and Order,* CC Docket No. 96-98, 11 FCC Rcd 19392, (1996) (*Local Competition Second Report and Order*), *vacated in part sub nom. People of the State of California v. Federal Communications Commission,* 124 F.3d 934 (8th Cir. 1997), *rev'd*, *AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct 721 (1999).

[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan*, First Order on Reconsideration, CC Docket No. 96-98, FCC 99-170, 1999 WL 507245 (1999).

[6] 47 U.S.C. § 251(b)(3).

directory assistance, directory listing and operator services.[7] In this Third Order on Reconsideration and Memorandum Opinion and Order, we resolve the issues concerning numbering administration raised in Petitions for Reconsideration or Clarification filed in response to the *Local Competition Second Report and Order*.[8] We also resolve certain issues raised by the New York State Department of Public Service (NYDPS) concerning our 10-digit dialing rule,[9] and resolve the Petition for Declaratory Ruling filed by the Commonwealth of Massachusetts Department of Public Utilities requesting that we clarify whether states may allow wireless customers to retain wireless

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[7] *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, Third Report and Order, CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order, CC Docket No. 96-98, Notice of Proposed Rulemaking, CC Docket No. 99-273, FCC 99-227 (1999) (*Subscriber List Information/Directory Assistance Order and Notice*).

[8] A list of petitioners and commenting parties appears at Appendix A.

SBC Communications Inc. (SBC) filed its Petition for Reconsideration on behalf of its subsidiaries, Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SWBMS). SBC, however, did not file its Petition for Reconsideration until October 8, 1996, one day after the 30 day filing period required by section 405(a) of the Act had expired. *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d). SBC filed a motion requesting that we accept its late-filed pleading. MFS filed a motion to dismiss SBC's late-filed Petition for Reconsideration and an opposition to SBC's motion to accept that pleading. In the *Local Competiton Second Report and Order, Second Order on Reconsideration*, the Commission denied SBC's motion, *see* FCC 99-227, ¶ 112, n.318, but decided to treat SBC's Petition for Reconsideration as an informal comment.

On January 12, 1998, the State of New York Department of Public Service filed a Motion for Leave to File Supplemental Petition, Supplemental Petition for Reconsideration and an Affidavit in Support of Supplemental Petition for Reconsideration with the Commission. Because the NYDPS Supplemental Petition merely amends its timely-filed initial Petition for Reconsideration, we grant this motion. Issues addressed in Discussion Part I of the NYDPS Petition for Reconsideration are disposed of in the *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. 52.19(3)(C)(ii)*, CC Docket No. 96-98, DA 98-1434 (rel. July 20, 1998). Issues addressed in Discussion Part II are addressed within this order. 47 U.S.C. § 154(j).

[9] As discussed in paragraphs 28 through 45, *infra*, and in the *Local Competition Second Report and Order*, the Commission requires states to initiate mandatory ten-digit dialing where a state had implemented an area code overlay. The NYDPS had filed an application for review of the *July 20 New York Order* denying the NYDPS request for expedited waiver of the ten digit dialing rule. New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), *Order*, NSD File No. L-98-03, DA 98-1434, 13 FCC Rcd 13491 (1998) (*July 20 New York Order*). The NYDPS had also filed a petition to stay both the *July 20 New York Order* as well as ten digit dialing portion of the *Local Competition Second Report and Order*, for a period of seven months following the completion of judicial review of the orders. As discussed in paragraph 30, *infra* , the NYDPS also sought and was granted a stay of the Commission's 10 digit dialing requirement by the United States Court of Appeals for the Second Circuit.

telephone numbers in an area code[10] subject to a "geographic split."[11] In future orders we will resolve petitions for reconsideration filed in response to the Commission's rules implementing dialing parity under section 251(b)(3) of the Act,[12] and network disclosure under section 251(c)(1) of the Act.[13]

II. EXECUTIVE SUMMARYII. EXECUTIVE SUMMARYII. EXECUTIVE SUMMARY

3. Section 251(e)(1) of the Act grants the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States."[14] In this Order, we exercise that jurisdiction and affirm our area code implementation guidelines by declining to permit area code overlays based on major trading areas (MTAs),[15] and by declining to require permanent number portability as a condition precedent to the implementation of area code overlays.[16] We revise our guidelines by eliminating the requirement that an area code overlay plan include the assignment of at least one central office code (NXX code) to each new entrant that had

[10] Area codes are derived from Numbering Plan Areas (NPAs) created in the 1940's by AT&T as part of an integrated toll dialing plan that involved dividing the U.S. and Canada into eighty-three "zones," each of them identified by three digits. These "zones" are now referred to as NPAs or area codes, and the three digits representing these areas are referred to as NPA codes or area codes. *See* Administration of the North American Numbering Plan, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2593 ¶ 8 (1995). Currently, the North American Numbering Plan (NANP) area consists of the United States, Canada, and a number of Caribbean countries. There are geographic NPAs which correspond to discrete geographic areas within the NANP Area and non-geographic NPAs that are instead assigned for services that transcend specific geographic boundaries, such as NPAs in the toll free 800-number format. *See* Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines* (reissued April 1997) (*CO Code Guidelines*).

[11] *See Petition for Declaratory Ruling by Commonwealth of Massachusetts Department of Public Utilitie*s, NSD-L-96-15 (Oct. 9, 1996) (*DPU Petition*). A geographic split occurs when the geographic area of an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to the new area code. *See Local Competition Second Report and Order*, 11 FCC Rcd at 19513 ¶ 273. A list the parties commenting on the *DPU Petition* is included in Appendix A.

[12] 47 U.S.C. § 251(b)(3).

[13] 47 U.S.C. § 251(c)(1).

[14] 47 U.S.C. § 251(e)(1), *see infra* ¶¶ 4-8.

[15] *See infra* ¶¶ 9-13.

[16] *See infra* ¶¶ 14-21.

no NXX codes in the original area code 90 days before introduction of the new overlay code.[17] We affirm our area code guidelines' requirement that states must impose 10 digit dialing where they have implemented an area code overlay,[18] and clarify that state commissions may allow callers to dial national 555 numbers using 7 digits, even if the call is placed from an area code subject to an overlay.[19] In response to the Petition for Declaratory Ruling filed by the Commonwealth of Massachusetts Department of Public Utilities (MDPU), we find that state commissions may "take-back" or "grandfather" Type 2 wireless numbers when an area code undergoes a geographic split.[20] In addition, we authorize state regulatory commissions to resolve issues involving fees charged for the assignment and activation of NXX codes and we find that LECs are to assess no fees for opening NXX codes.[21] We continue to extend many protections under the Act to paging service providers.[22] Finally, we affirm that our numbering administration cost recovery formula is competitively neutral and that we will retain this method for the current funding year.[23] We note, however, that in a separate proceeding we have concluded that, in order to lessen the regulatory burden on all telecommunications carriers, we should consolidate and streamline six carrier reporting requirements[24] into one report.[25] In order to include cost recovery for the administration of the North American Numbering Plan in the unified report, we concluded that the NANP cost recovery allocator should be changed to be consistent with the other reporting requirements.[26] This

[17] *See infra* ¶¶ 22-27.

[18] *See infra* ¶¶ 28-45.

[19] *See infra* ¶¶ 46-52.

[20] *See infra* ¶¶ 53-71.

[21] *See infra* ¶¶ 72-86.

[22] *See infra* ¶¶ 87-91.

[23] *See infra* ¶¶ 92-100.

[24] These requirements are: NANP administration, 47 C.F.R. §§ 52.1 *et seq.,* Telecommunications Relay Services (TRS) Fund, 47 C.F.R. §§ 64.601 *et seq.*, federal universal service support mechanisms, 47 C.F.R. §§ 54.1 *et seq*., 69.1 *et seq*., and the cost recovery mechanism for long-term local number portability (LNP) administration, 47 C.F.R. §§ 52.21 *et seq*.

[25] *1998 Biennial Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. July 14, 1999) (*Contributor Reporting Requirements Order*)at ¶¶ 59-70.

[26] *See infra* ¶ 100.

requirement will begin in the billing cycle beginning March 2000.[27]

III. DISCUSSIONIII. DISCUSSIONIII. DISCUSSION

4. Congress, in enacting the 1996 Act, and the Commission, through rulemaking proceedings, have recognized that fair and impartial access to telephone numbering resources is critical for entities seeking to provide telecommunications services because "telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network."[28] In order best to effectuate impartial access to telephone numbers on a national scale, section 251(e)(1) of the Act grants the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States."[29] Further, because some numbering issues are better resolved with the aid of state and local expertise, the Act states that "[n]othing in this paragraph shall preclude the Commission from delegating to state commissions or other entities all or any portion of such jurisdiction,"[30] allowing the Commission to delegate its exclusive authority over numbering issues. Based upon this statutory language, the Commission retained its authority to set policy on number administration matters but authorized the states to resolve certain matters involving the implementation of new area codes "subject to the Commission's numbering administration guidelines."[31]

A. Area Code Implementation GuidelinesA. Area Code Implementation GuidelinesA. Area Code Implementation Guidelines

[27] *Contributor Reporting Requirements Order* at ¶ 70.

[28] *Id.* at 19508; *see* 1996 Act; *see* Administration of the North American Numbering Plan, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591 ¶ 261 (1995) (*NANP Order*).

[29] *Local Competition Second Report and Order*, 11 FCC Rcd at 19511 ¶ 4; 47 U.S.C. § 251(e)(1).

[30] 47 U.S.C. § 251(e)(1).

[31] *Local Competition Second Report and Order*, 11 FCC Rcd at 19517 ¶ 283.

5. Telephone numbers in the United States are composed of a 3-digit numbering plan area code (NPA code), a 3-digit central office code (NXX code) and a 4-digit line number. Area codes are assigned by Lockheed Martin IMS, which serves as the NANP Administrator (NANPA). Prior to Lockheed's selection as NANPA, the incumbent LEC within each geographic area had performed central office code assignment and area code relief functions,[32] in collaboration with Bell Communications Research, Inc. (Bellcore).[33] In October, 1997, the Commission affirmed the

[32] "Central office code" or "NXX code" refers to the second three digits (also called digits D-E-F) of a ten-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9. 47 C.F.R. § 52.7(c). "Area code relief" refers to the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and a new area code is introduced. 47 C.F.R. § 52.7(b).

[33] Area codes were previously assigned by Bell Communications Research, Inc. (Bellcore), which was established on January 1, 1984, under the Plan of Reorganization as part of the divestiture of AT&T. Originally called the Central Services Organization, Bellcore was established to give support to the newly formed regional Bell Operating Companies in a manner similar to that which had been provided to AT&T by Bell Laboratories. *United States v. Western Electric,* 569 F. Supp. 1057, 1113-18 (D.D.C. 1983) (approving creation of Central Services Organization proposed in Plan of Reorganization); *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983); *see U.S. v. American Telephone & Telegraph Company and U.S. v. Western Electric Company,* Modification of Final Judgment, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom*., *Maryland v. United States,* 460 U.S. 1001 (1983) (*MFJ*). Originally, Bellcore had been owned and controlled jointly by the Regional Bell Holding Companies (RHCs). *See* Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, CC Docket No. 96-254, *Notice of Proposed Rulemaking*, FCC 96-472, 62 FR 3638, 3645 (rel. Dec. 11, 1996) (*BOC Manufacturing NPRM*). The RHCs, however, sold Bellcore to Science Applications International Corporation (SAIC). *See* Letter from Louise L.M. Tucker, Bellcore, to Chmn. William Kennard, Commr. Michael Powell, Commr. Gloria Tristani, Commr. Harold Furchtgott-Roth, Commr. Susan Ness, A. Richard Metzger, Jr., and Geraldine Matise, FCC dated November 17, 1997. Bellcore is now known as Telcordia Technologies.

As new entities entered the telecommunications market, particularly wireless entrants in direct competition with the wireline industry, the wireline industry's continued administration of the NANP became more controversial. North American Numbering Plan, CC Docket No. 92-237, *Third Report and Order and Third Report and Order*, para. 4 (rel. Oct. 9, 1997) (*NANP Third Report and Order*), citing *NANP Order*, 11 FCC Rcd at 2594 ¶¶ 11-12. The Commission directed the North American Numbering Council, a federal advisory committee created to advise the Commission on numbering matters, to recommend to the Commission an independent, non-government entity to serve as NANPA. In October 1997, the Commission affirmed the selection of Lockheed Martin IMS as the new NANPA, noting that it would perform the numbering administration functions performed by Bellcore. *See NANP Third Report and Order* at paras. 1, 20, 59.

On December 21, 1998, Lockheed Martin IMS notified the Commission that it had signed an agreement to sell the division which serves as the NANPA, Lockheed Martin Communications Industry Services (CIS), to the management of that division and to an affiliate of E.M. Warburg, Pincus & Company, known as Warburg, Pincus Equity Partners, L.P. *See* Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File No. 98-151, at 1, 5 (Dec. 21, 1998) (Lockheed

selection of Lockheed Martin IMS as the new NANPA, noting that it would perform the numbering administration functions previously performed by Bellcore, as well as area code relief planning and CO code administration, previously performed by the incumbent LECs.[34]

6. Typically, there are 792 NXX codes available for assignment in an area code, counting every possible combination of three digits excluding numbers beginning with a 0 or a 1 and numbers ending with 11.[35] In turn, each NXX code has approximately 10,000 numbers available for assignment to individual customers. NXX codes are assigned to a particular geographic rate center in an area code[36] and a carrier with a particular NXX can only serve customers associated with the rate center to which the NXX is assigned. The number of NXXs associated with a rate center varies according to population density and the consequent demand for telephone numbers in the geographic area covered by the center.

7. The *Local Competition Second Report and Order* authorized the states, incumbent LECs, and the NANPA to continue to initiate area code relief plans and perform ongoing numbering

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Martin Request).

The Common Carrier Bureau solicited input from the public concerning the Lockheed Martin Request, asking that interested parties submit to the Bureau a list of issues and questions that should be addressed by Lockheed Martin IMS prior to Commission determination of the request. FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Public Notice*, CC Docket No. 92-237, NSD File No. 98-151, DA 99-117, at 6 (rel. Jan. 7, 1999). On January 27, 1999, the Bureau directed certain questions to Lockheed Martin, which Lockheed Martin addressed in a filing dated February 16, 1999. Lockheed Martin IMS Responses to Questions and Issues Regarding Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151.

On February 17, 1999, the Bureau gave notice of Lockheed Martin's responses, and solicited further comment from the public on whether the Lockheed Martin Request should be granted. FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Public Notice*, CC Docket No. 92-237, NSD File No. 98-151, DA 99-347 (rel. Feb. 17, 1999). Comments from the public were due on April 16, 1999. *Id.*

[34] *See NANP Third Report and Order*, 12 FCC Rcd at 23041-42, 23051-52, and 23071-72.

[35] *Local Competition Second Report and Order*, 11 FCC Rcd at 19511 ¶ 267, n.573.

[36] Rate centers are telephone company-designated geographic locations that are assigned vertical and horizontal coordinates within an area code. NEWTON'S TELECOM DICTIONARY, 11th Edition, at 498. *See also* Local Exchange Routing Guide (LERG), Volume 2, Section 1 at 24 (March 1997). Incumbent LECs have established the existing rate center configuration. *See Ex parte* letter from Judith E. Herrman, TCG, to William F. Caton, FCC, dated March 19, 1997 (TCG March 19, 1997 ex parte).

administration functions pending transfer of numbering administration responsibilities to the new NANPA.[37] A new area code is assigned when almost all of the NXX codes in an area code are consumed. States can implement new area codes through a geographic split,[38] a rearrangement of existing area code boundaries[39] or an area code overlay.[40] The Commission concluded that geographic splits and boundary realignments were presumptively consistent with our numbering administration guidelines.[41] The Commission, in the *Local Competition Second Report and Order*, however, prohibited service-specific or technology-specific overlays, finding that such overlays are unreasonably discriminatory and anti-competitive.[42]

8. The Commission authorized state commissions to implement area code overlays subject to the guidelines enumerated in the *Local Competition Second Report and Order* and section 52.19 of our rules.[43] Specifically, the Commission concluded that a state commission could choose

[37] *Local Competition Second Report and Order*, 11 FCC Rcd at 19536 ¶ 328.

[38] A geographic split occurs when "the geographic area using an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to the new area code." *Id.* at 19513 ¶ 273.

[39] States may realign area code boundaries to accommodate local needs. *Id.*

[40] An area code overlay occurs when the "new area code covers the same geographic area as an existing area code; customers in that area may thus be served through either code." *Id.*

[41] *Id.* at 19517-18 ¶ 284.

[42] *Id.* at 19518 ¶ 285. On March 31, 1998, subsequent to the close of the record on reconsideration of the *Local Competition Second Deport and Order*, the Connecticut Department of Public Utility Control (Connecticut Department) filed a Petition for a Rulemaking (titled a Petition for "Amendment to Rulemaking") requesting that the Commission amend its rule against technology-specific or service-specific area code overlays. Pursuant to a public notice released by the Commission on April 17, 1998, comments and reply comments were solicited on the Connecticut Department's request. *See* Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited, Public Notice, DA 98-743 (rel. April 17, 1998). The proceeding is currently pending before the Commission. The Commission has incorporated this and other related proceedings into the *Numbering Resource Optimization Notice*, in which it has announced its intent to reexamine its prohibition against technology specific overlays. Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays; Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes; California Public Utilities Commission; and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code, *Notice of Proposed Rulemaking*, FCC No. 99-122, CC Docket No. 99-200 (Released June 2, 1999) (*Numbering Resource Optimization Notice*) at ¶ 257.

[43] 47 C.F.R. § 52.19.

to implement an all-services area code overlay plan only when the plan included the following: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of an overlay.[44]

9. On June 2, 1999, the Commission released the *Numbering Resource Optimization Notice*,[45] in which the Commission sought comment to establish national guidelines, standards, and procedures for number optimization. Subsequently, the Commission granted interim authority to particular state commissions to implement certain number optimization measures.[46] The Commission stated that these grants of interim authority are limited delegations of authority that do not abrogate the state commissions' obligations to follow the area code implementation guidelines established in the *Local Competition Second Report and Order*, and will be superseded by the national guidelines, standards, and procedures that will be adopted in response to the comments sought by the Commission in the *Numbering Resource Optimization Notice*.[47]

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[44] *Id.*

[45] *See supra*, n.42.

[46] *See* California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-248, NSD File No. L-98-136 (rel. Sept. 15, 1999) (*California Delegation Order*); Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-249, NSD File No. L-99-33 (rel. Sept. 15, 1999); Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, *Order*, CC Docket No. 96-98, FCC 99-246, NSD File No. L-99-19 (rel. Sept. 15, 1999); New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-247, NSD File No. L-99-21 (rel. Sept. 15, 1999); Maine Public Utilities Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-260 (rel. Sept. 28, 1999) (*Maine Delegation Order*).

[47] *See, e.g., California Delegation Order* at ¶¶ 7-9 (citing *Pennsylvania Numbering Order*, at 19027, ¶ 26); *see also Pennsylvania Numbering Order* at 19014-16, ¶¶ 6-8 (clarifying that *Local Competition Second Report and Order* limited state authority over numbering issues to implementing area code relief to ensure fair and timely availability of numbering resources to all telecommunications carriers).

1. Using MTAs to Define Overlay Areas. Using MTAs to Define Overlay Areas. Using MTAs to Define Overlay Areas

a. *Background*

10. In the *Local Competition Second Report and Order*, the Commission did not contemplate or discuss changing the geographic coverage of area code overlays, or the realignment of area codes to reflect Major Trading Areas (MTAs), or other newly proposed geographic areas.

b. *Discussion*

11. Omnipoint asks that we modify the area code implementation guidelines to permit area code overlays based on MTAs.[48] According to Omnipoint, a voluntary MTA-based area code assignment scheme would allocate number resources more efficiently, facilitate the entry of competition into the local telecommunications marketplace, and would not discriminate against any service or technology.[49] Omnipoint observes that, because most MTAs encompass several states, the Commission itself, and not the states, would be required to oversee the implementation of voluntary MTA area code overlays.[50] Omnipoint states that the scarcity of numbering resources harms customers and that solutions that differ from the traditional approach of state-by-state number resource allocation must be found.[51]

12. BellSouth states that Omnipoint's petition should be denied because it is procedurally improper and it is, in reality, a petition for rulemaking rather than a petition for reconsideration because it seeks to alter the underpinnings of the NANP's area code system and assignment guidelines.[52] U S WEST states that the Commission should refer Omnipoint's proposal to the Industry Numbering Committee (INC) for initial consideration.[53] Omnipoint responds that it may

[48] Omnipoint Petition at 7-8.

[49] *Id.* at 1-2. According to Omnipoint, MTAs were adopted as PCS license territories to allow licensees to tailor their systems to the natural geographic dimensions of PCS markets, and the Commission rejected geographic licenses based on LATA boundaries. *Id.* at 8.

[50] *Id.* at 16.

[51] *Id.* at 5.

[52] BellSouth Opposition at 6.

[53] U S WEST Opposition at 10 n. 14; *see also* BellSouth Opposition at 6.

request reconsideration of those aspects of the *Local Competition Second Report and Order* that delegate authority to the states and cause inefficiencies for its MTA-based PCS operations.[54] Omnipoint states that it raised the MTA-based area code proposal in this proceeding, but the *Local Competition Second Report and Order* did not address the merits of its contention, and thus the Commission's procedural rules permit Omnipoint to seek reconsideration of those portions of the rules and order that conflict with the proposal.[55]

13. We decline in this order to implement the MTA-based area code proposal suggested by Omnipoint. The current geographic-based area codes and number allocation system were neither issues on which comments were solicited in the *Local Competition NPRM*[56] nor the result of Commission action in the *Local Competition Second Report and Order*. While we agree that innovative solutions to number exhaust must be developed, the present record is not sufficient to enable us to impose an MTA-based area code plan in this proceeding. We note that in the *Numbering Resource Optimization Notice*, the Commission seeks comment on the feasibility of expanded area overlays as a means of allocating new numbering resources to areas facing exhaust of existing NPAs.[57]

[54] Omnipoint Reply at 4.

[55] Omnipoint Reply at 4-5.

[56] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, 11 FCC Rcd 14171 (1996) (*Local Competition NPRM*).

[57] *Numbering Resource Optimization Notice*, at ¶ 255.

2. Implementing Area Code Overlays in Conjunction with Telephone Number Portability. Implementing Area Code Overlays in Conjunction with Telephone Number Portability. Implementing Area Code Overlays in Conjunction with Telephone Number Portability

a. *Background*

14. The *Local Competition Second Report and Order* stated that circumstances in certain localities may justify the use of area code overlays and that states are uniquely situated to determine the type of area code relief that is best suited to local areas.[58] Area code overlays are sometime favored over geographic solutions based on splitting area codes because they do not require existing telephone customers to change their telephone numbers.[59] We also found, however, customers would find it less attractive to switch carriers if new entrants had to assign telephone numbers to their customers from the new, overlay area code, while incumbent LECs had telephone numbers available for assignment to their customers from both the overlay code and the old area code.[60]

15. In the *Local Competition Second Report and Order,* we acknowledged our previous finding that business and residential customers are often reluctant to switch carriers if they must change their telephone numbers to do so.[61] We declined, however, to require the implementation of permanent number portability[62] as a prerequisite to state implementation of NPA overlays.[63] We found that although permanent number portability, when fully deployed, will allow customers to keep their telephone numbers (including area codes) when they change local service providers, requiring permanent number portability prior to the implementation of an overlay would deny state commissions the option of implementing an overlay while many area codes are facing exhaust.[64]

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[58] *Local Competition Second Report and Order*, 11 FCC Rcd at 19517 ¶ 283.

[59] *Id.*

[60] *Id.* at 19519 ¶¶ 287-289.

[61] *Id.* at 19520 ¶ 290.

[62] Section 153(30) of the Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30).

[63] *Local Competition Second Report and Order*, 11 FCC Rcd at 19519-20 ¶ 290.

[64] *Id.* at 19520 ¶ 290.

Based on these considerations, we declined to require permanent service provider number portability in an area code before an overlay code could be implemented.[65]

b. *Discussion*

16. AT&T, Cox, MFS, MCI, NCTA, Sprint, and TCG maintain that area code overlays are inherently anticompetitive and should not be implemented without the deployment of permanent number portability to counter their discriminatory effects.[66] Several parties state that interim number portability is not a suitable alternative to permanent number portability and does not sufficiently mitigate the anti-competitive impact of overlays because it requires new entrants to offer their customers lower quality service.[67] According to NCTA, competitive LECs would face substantial competitive disadvantages in overlay areas where only interim number portability has been implemented[68] and MFS asserts that "interim portability entails significant additional costs, makes inefficient use of scarce numbering resources, and cannot be used in all customer situations."[69] TCG contends that RBOCs, which are also incumbent LECs, have no incentive to deploy permanent number portability because it is not on the competitive checklist under section 271 of the Act and the delay will thwart competition in overlay areas.[70] TCG requests that the Commission allow state commissions the discretion to impose a permanent number portability requirement, even if the Commission declines to do so.[71]

17. BANM, however, claims that parties have failed to produce evidence that interim number portability has been inadequate or unworkable, because it permits customers to keep their current numbers while switching to new service providers.[72] AirTouch asserts that the use of overlays should not be postponed until permanent number portability has been implemented because

[65] *Id.* at 19520-21 ¶¶ 290-293.

[66] *See* AT&T Petition at 9; Cox Petition at 2,5; MFS Petition at 6, 9-10; MCI Opposition at 8; NCTA Opposition at 1-3; Sprint Opposition at 7-8; TCG Opposition at 3-4.

[67] AT&T Petition at 8-9; Cox Petition at 5; TCG Petition at 10-11.

[68] Cox Petition at 5; NCTA Opposition at 6.

[69] MFS Petition at 7-8.

[70] TCG Opposition at 5.

[71] TCG Petition at 12.

[72] BANM Opposition at 4-5; *see* PTG Opposition at 2-3; *see also* NYNEX Reply at 8.

the benefits of overlay relief, on balance, outweigh the concerns that interim number portability results in lower quality service to subscribers.[73] GTE and USTA state that requiring the implementation of permanent number portability before overlays can be used would essentially eliminate overlays as a source of area code relief because permanent number portability is still in its infancy and not yet technically feasible.[74]

18. BANM and USTA contend that the Commission should not further intrude into the decision making of state commissions by foreclosing the use of overlays until permanent number portability is deployed.[75] Cox, however, argues that mandating the availability of permanent number portability before an overlay is implemented would not prevent states from adopting overlays because a state could simply enact speedier local deployment schedule for permanent number portability.[76]

19. We continue to believe that we should not condition the use of area code overlays upon the national deployment of permanent number portability. Through the guidelines adopted in the *Local Competition Second Report and Order*, the Commission authorized the states to implement area code overlays as a method of area code relief.[77] In that *Order,* the Commission also rejected suggestions that it condition the use of area code overlays on the prior availability of permanent number portability.[78] Instead, we decided that mandatory 10-digit dialing and the assignment of one NXX from the existing NPA for each new entrant competitor were sufficient safeguards to protect competition if a state commission adopted an area code overlay plan. To the extent that petitioners in this proceeding assert that area code overlays should be implemented only after permanent number portability is available, they merely restate the objections to overlays that were presented in the original proceeding. Further, because permanent number portability in the top 100 metropolitan statistical areas (MSAs) is substantially deployed,[79] petitioners' argument is largely

[73] AirTouch Opposition at 12.

[74] GTE Opposition at 13; USTA Opposition at 4.

[75] BANM Opposition at 8; USTA Opposition at 4*; see also* SNET Opposition at 10.

[76] Cox Petition at 7.

[77] *Local Competition Second Report and Order,* 11 FCC Rcd at 19516-17 ¶¶ 281-283.

[78] *Id.* at 19519-20 ¶ 290.

[79] The Commission mandated that LECs provide interim number portability to any requesting carrier during the transition period prior to the implementation of permanent number portability. *Number Portability Order*, 11 FCC Rcd at 8369 ¶ 33. The phased deployment schedule for permanent number portability to be deployed in the 100 largest

moot.[80] Because petitioners have offered no new reason to require permanent number portability as a precondition for an area code overlay, we reject petitioners' requests for reconsideration of that aspect of our decision.

20. We have previously stated that "number portability is essential to ensure meaningful competition in the provision of local exchange services."[81] In the *Local Competition Second Report and Order*, we stated that both interim and permanent number portability would allow customers to keep their telephone numbers when they changed telephone carriers.[82] We have also stated that the BOC checklist in section 271(c)(2) clearly contemplates that interim number portability methods should serve only as temporary methods until long-term number portability can be provided.[83] As we discuss in paragraph 41, *infra*, interim number portability has technical limitations that do not fully ameliorate the perceived anticompetitive effects of overlays. In order to offset these anticompetitive effect, we adopted further safeguards in our area code guidelines, including a precondition of 10-digit dialing where a state intends to implement an all services overlay. We discuss petitions concerning our 10-digit dialing requirement in paragraphs 28-45, *infra*.

21. For the reasons stated above, we reaffirm our decision not to impose permanent number portability as a condition precedent to the implementation of area code overlay plans. We also emphasize that state commissions are authorized to make decisions regarding the relative merits of area code splits, boundary realignments, and overlays so long as they act consistently with the Commission's guidelines.

Metropolitan Statistical Areas commenced October 1, 1997, and concluded December 31, 1998. *Number Portability First Reconsideration Order*, 12 FCC Rcd at 7326 ¶ 27.

[80] Although the Commission issued an order forbearing from requiring commercial mobile radio service (CMRS) providers to supply service provider number portability in the top 100 Metropolitan Statistical Areas until November 24, 2002, *Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, WT Docket No. 98-229, Memorandum Opinion and Order, FCC 99-19 (rel. Feb. 9, 1999) (*CMRS LNP Forbearance Order*), this decision does not justify any delay in efforts -- such as area code overlays -- to promote the efficient use of numbers by all carriers. *See id.*

[81] *Number Portability Order*, 11 FCC Rcd at 8368 ¶¶ 30-31.

[82] *Local Competition Second Report and Order,* 11 FCC Rcd at 19520 ¶ 290.

[83] *Number Portability Order*, 11 FCC Rcd at 8412 ¶¶ 115-116.

3. Allocation of a Single NXX Code. Allocation of a Single NXX Code. Allocation of a Single NXX Code

a. *Background*

22. In the *Local Competition Second Report and Order* the Commission adopted two provisions to ensure that competitors, especially new entrants, would not suffer competitive disadvantages when an area code overlay was implemented: local 10-digit dialing and the assignment of one NXX per new telephone exchange service provider.[84] In establishing the one-NXX-code-per-new-entrant requirement, the Commission concluded that a state commission could choose to implement an overlay only if it ensured that at least one NXX code would be available in the existing area code for release to every telecommunications carrier, including any CMRS provider, authorized to provide telephone exchange service, exchange access, or paging service in the existing area code during the 90-day period preceding the introduction of the overlay.[85] This requirement was designed to reduce the potential anti-competitive effect of an area code overlay by ensuring a new entrant access to numbering resources in both the old area code and new area code.[86] The Commission reasoned that otherwise an incumbent LEC would have a competitive advantage over a new entrant because the competing exchange service provider would have to assign its customers telephone numbers in the new area code overlay while the incumbent LEC could continue to assign numbers in the old area code to its customers.[87] The Commission noted that an incumbent LEC might have greater access to numbers in the old "desirable" area code because it was able to warehouse NXXs in the old code and recycle numbers from the old area code that were turned in by customers who moved, requested a new number, or changed to a different service provider.[88]

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[84] *Local Competition Second Report and Order,* 11 FCC Rcd at 19518 ¶ 286.

[85] *Id.*; *see also* 47 C.F.R. § 52.19(c)(3)(iii).

[86] *Local Competition Second Report and Order*, 11 FCC Rcd at 19519 ¶ 288.

[87] *Id.* at ¶ 289.

[88] *Id.*

b. *Discussion*

23. A number of parties argue that allotting one NXX to a new entrant carrier does not provide the new entrant a meaningful opportunity to compete in the older pre-overlay area code with an incumbent LEC who has usually reserved NXXs in the majority of rate centers in that area code.[89] AT&T explains that an incumbent LEC will be able to assign numbers to customers from rate centers across the entire old NPA while a new entrant carrier receiving a single NXX, pursuant to the Commission requirement, would be limited to assigning telephone numbers from a single geographic rate center.[90] AT&T, MFS, and TCG state that this disproportionate division of NXXs would handicap new entrants because they could not serve customers located outside of the geographic area of the central office associated with the one NXX and wanting numbers in the existing area code.[91] In addition, the competitive advantage enjoyed by an incumbent LEC with NXXs in a majority of rate centers within an area code is enhanced as the incumbent LEC reuses numbers turned in by customers departing the area or changing carriers.[92] BellSouth disagrees with these parties and instead urges the Commission to retract its statement in the *Local Competition Second Report and Order* that incumbent LECs' ability to warehouse NXXs in the old area code gives them an advantage over new entrants[93] and eliminate or modify the one-NXX -code-per-new-entrant requirement.[94]

24. Ameritech, Bell Atlantic, BellSouth, NYNEX, SNET, and USTA assert that the one-NXX-code-per-new-entrant requirement will accelerate the consumption of numbering resources and force the early depletion of area codes because area code relief planners must set aside a significant number of NXXs to distribute among competing carriers during the 90 days prior to the implementation of an area code overlay.[95] USTA states that area code relief planning could be

[89] AT&T Petition at 6-7; Cox Petition at 4-5; MFS Petition at 8-9; TCG Petition at 5-7.

[90] AT&T Petition at 6-7.

[91] *Id.* at 6-7; MFS Petition at 8; TCG Petition at 5-7. TCG notes, however, that the one NXX requirement may help wireless providers because, unlike wireline LECs, they can spread their NXX code assignment over their entire area code service area.

[92] AirTouch Opposition at 9 and TCG Petition at 5.

[93] *Local Competition Second Report and Order*, 11 FCC Rcd at 19519 ¶ 289.

[94] BellSouth Petition at 7-8; BellSouth Reply at 2.

[95] Ameritech Opposition at 6; Bell Atlantic Opposition at 4; BellSouth Petition at 8; NYNEX Petition at 11-12; SNET Opposition at 9; USTA Petition at 10.

disrupted as a "single new carrier would be able to exercise a veto right over an overlay plan by requesting a NXX in the existing area code 90 days prior to implementation;"[96] NYNEX and USTA note that a last minute cancellation of an area code overlay plan could undo months of work by numbering resource administrators and cause carriers to be unable to meet customer requests for new numbers.[97] PTG contends that the "sheer and growing number of new entrants" makes it impossible to implement the one-NXX-code-per-new-entrant requirement.[98]

25. NYNEX, GTE, the Pennsylvania Commission, and USTA request that the Commission delete the one NXX-code-per-new-entrant requirement.[99] USTA maintains that NXXs should be assigned on a first-come, first-served basis as long as they are available in the old area code, with no reference to a 90-day time frame.[100] AT&T and MFS suggest that we mandate distribution of all of the remaining NXXs in the old area code when an overlay plan is implemented.[101] AirTouch and TCG recommend that each certified carrier have sufficient NXXs in the old area code to serve the entire geographic area covered by the code prior to implementation of an area code overlay plan.[102] BellSouth asserts that NXXs should be assigned only to authorized facilities-based carriers that do not already have NXXs 90 days prior to overlay implementation.[103] Several parties assert that state commissions are best positioned to address local area code relief circumstances,[104] but that the one NXX-code-per-new-entrant requirement prevents state

[96] USTA Petition at 10.

[97] NYNEX Petition at 12; USTA Petition at 10.

[98] PTG asserts that the California PUC has issued certificates of public convenience and necessity to seventy-one new providers of local exchange service. PTG Opposition at 4. This number has increased in the interim since the record closed in this proceeding. The Telecommunications Division of the California Public Utilities Commission lists on its Web site certificated competitive local carriers (facilities) and certificated competitive local carriers (resellers). The Division notes that companies may do business under more than one name, and therefore appear on a list more than once. As of 8/30/99, the list of certificated competitive local carriers (facilities) contained 99 names, and, as of 8/26/99, the list of certificated competitive local carrier (resellers) contained 94 names. *See* <http://www.cpuc.ca.gov/telecommunications/lists.htm>, visited 9/8/99.

[99] GTE Opposition at 12; NYNEX Petition at 11; Pennsylvania Commission Petition at 5; USTA Petition at 9.

[100] USTA Opposition at 6.

[101] AT&T Petition at 9; MFS Petition at 9.

[102] AirTouch Opposition at 8; Teleport Petition at 7.

[103] BellSouth Petition at 8; BellSouth Opposition at 3.

[104] SNET Opposition at 8-9; Ohio PUC Opposition at 4-5; NYNEX Reply at 9; U S WEST Opposition at 13.

commissions from choosing an overlay as an area code relief plan option if there are not enough NXXs available for distribution to new entrant carriers.[105]

26. We continue to believe that the disproportionate allocation of NXXs between the incumbent LECs and their competitors is a serious problem. Until recently, incumbent LECs acted as NXX Administrators,[106] and in that role they established the existing rate center configurations and assigned themselves NXXs in each rate center throughout each NPA in which they provide local telephone service. Under current call rating mechanisms, all local exchange carriers require at least one full NXX code (i.e., a block of 10,000 numbers) per rate center and competing wireline service providers are assigned a full NXX for each rate center in the geographic area in which they establish service.[107] In many areas this rate center configuration creates a shortage of NXX codes even if there remains a significant quantity of unassigned numbers because an incumbent LEC or competing wireline service provider is assigned a full NXX in order to serve customers in a particular rate center area, although the carrier or service provider may only have a few customers requiring telephone numbers.[108] Once an NXX code has been assigned, the entity receiving the NXX manages the numbers available within the NXX.[109] Thus, incumbent LECs retain the NXX codes that they previously assigned themselves and therefore have an abundance of available numbers in reserve from the older NXXs. We concluded in the *Local Competition Second Report and Order*[110] that such "warehousing" of NXXs gives incumbent LECs, the dominant providers of local exchange service,[111] a competitive advantage over new entrants when an overlay is about to be introduced. In reaching this conclusion, we did not mean to suggest that incumbent LECs have been unfair or

[105] Ameritech Opposition at 6; NYNEX Petition at 12; Pennsylvania Commission Petition at 5-6.

[106] *See supra* ¶ 5.

[107] *See Numbering Resource Optimization Notice* at ¶ 112.

[108] *Id.*

[109] *See CO Code Guidelines*.

[110] *Local Competition Second Report and Order*, 11 FCC Rcd at 19519 ¶ 289.

[111] "Congress acknowledged that incumbent LECs . . . possess an approximate 99.7 percent share of the local market as measured by revenues." *Local Competition NPRM*, 11 FCC Rcd at 14175, ¶ 6, *citing Telecommunications Industry Revenue: TRS Fund Workshop Data*, FCC Industry Analysis Division, Feb. 1996. LEC revenues in 1994 were $98.4 billion, while total Competitive Access Provider (CAP) revenue was $287 million. Even though new local telephone service competitors continue to grow at a rapid pace, their presence remains less than 5% of the local market, as measured by total local service revenues. (FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition* (rel. Dec. 1998) at 1.

partial in their role as code administrators. We do, however, share petitioners' concerns that the disproportionate allocation of NXXs to incumbent LECs -- a logical result of their incumbency -- does give incumbent LECs an advantage over new entrants.

27. Despite our ongoing concern over the advantages of incumbency, however, we also agree with the majority of parties commenting on this issue that the requirement of one-NXX-code-per-new-entrant included in section 52.19(c)(3)(iii) of the Commission's rules does not significantly promote the interests of new entrants and competitive LECs seeking to compete with incumbent LECs in local telecommunications markets. We further agree that the assignment of one NXX to each new entrant creates uncertainty in the area code relief planning process and may actually spur the depletion of numbering resources. Therefore, we conclude that we should eliminate section 52.19(c)(3)(iii) of our rules, which provides that a state commission may choose to implement an all-service area code overlay plan only when the plan includes the assignment, during the 90-day period preceding the introduction of that overlay, of at least one NXX code to each new entrant.[112] Our modification to section 52.19 of our rules is contained in Appendix B, *infra*.[113]

4. Mandatory 10-Digit Dialing. Mandatory 10-Digit Dialing. Mandatory 10-Digit Dialing

a. *Background*

28. The *Local Competition Second Report and Order* requires that, when a state initiates an area code overlay, that state also require 10-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.[114] The Commission reasoned that requiring 10-digit dialing for all calls would minimize dialing disparity between telephone customers using the old area code and customers using the new area code and thus ensure that the introduction of the overlay would not deter competition.[115] Absent 10-digit dialing, telephone customers using the old area code would dial seven digits to call others with numbers in that area code, but users within the new overlay area code would have to dial 10 digits to reach customers in the old area code.

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[112] 47 C.F.R. § 52.19(c)(3)(iii).

[113] In light of our decision to eliminate our one NXX per new entrant rule, BellSouth's request that the rule only apply to facilities-based carriers is moot.

[114] *Local Competition Second Report and Order*, 11 FCC Rcd at 19518 ¶ 286; *see also* 47 C.F.R. § 52.19(c)(3)(ii).

[115] *Id.* at ¶ 287.

b. *Discussion*

29. Bell Atlantic, Jubon, NYNEX, the NYDPS, and the Pennsylvania Commission all filed petitions requesting that the Commission either rescind or modify the mandatory 10-digit local dialing requirement for all customers between and within area codes in the area covered by the new code.[116] Further, on January 9, 1998, the NYDPS filed a petition for waiver of the 10-digit dialing rule for two NPAs to be implemented in New York City.[117] On July 20, 1998, the Common Carrier Bureau, on delegated authority, denied the NYDPS request for a permanent waiver, but extended the period during which 10-digit dialing could be accomplished on a permissive basis.[118]

30. On August 17, 1998, the NYDPS filed an application to the Commission for review of the *July 20 New York Order*.[119] On that same date, the NYDPS filed a petition to stay both the *July 20 New York Order* as well as the 10-digit dialing requirement of the *Local Competition Second Report and Order* for a period of seven months following the completion of judicial review of the orders.[120] Subsequently, on March 15, 1999, the NYDPS filed a petition for a writ of mandamus with the United States Court of Appeals for the Second Circuit, directing the Commission to act on the NYDPS petition for reconsideration of the 10-digit dialing rule as set forth in the *Local Competition Second Report and Order* as well as the NYDPS application for review of the Bureau's

[116] Bell Atlantic Opposition at 3; Jubon Engineering Petition at 5; NYDPS Petition at 9; NYNEX Petition at 11; Pennsylvania Commission Petition at 5.

[117] New York State Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii). The Petition sought a permanent waiver of this rule on the bases that competition already exists in New York and thus 10-digit dialing would not effect competition; number portability ameliorates the anticompetitive effects of dialing disparities; and the requirement would unduly inconvenience callers in the New York City. *Id.*

[118] New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), *Order*, NSD File No. L-98-03, DA 98-1434, 13 FCC Rcd 13491 (1998) (*July 20 New York Order*). On November 6, 1998, the NYDPS requested that this date be extended until January 15, 2000, to provide for necessary network upgrades and consumer education. *See* Letter from Lawrence G. Malone, NYDPS, to Lawrence E. Strickling, FCC, dated November 6, 1998. On December 4, 1998, the Bureau extended this permissive dialing period to April 15, 2000 in response to the NYDPS request. New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), *Order*, NSD File No. L-98-03, DA 98-2310 (adopted December 4, 1998) (*December 4 New York Order*).

[119] New York State Department of Public Service Petition for Expedited Waiver, filed August 17, 1998 (NYDPS Review Petition).

[120] New York State Department of Public Service Petition for Stay, filed August 17, 1998 (NYDPS Stay Petition).

denial of the *July 20 New York Order*. On that day, the NYDPS also filed a motion with the Second Circuit for stay of the Commission's 10-digit dialing rule. On March 26, 1999, the Second Circuit granted the NYDPS motion for a stay of the Commission's 10-digit dialing rule in the State of New York until one year after the FCC rules on the NYDPS petition for reconsideration of the 10-digit dialing rule and on the NYDPS application for review of the *July 20 New York Order*, or until the Second Circuit rules on the NYDPS petition for Writ of Mandamus.[121]

31. In its filings before the Commission, the NYDPS contends that, under section 2(b)[122] of the Act, jurisdiction over dialing patterns for intrastate calls remains with the states[123] and that the Commission's 10-digit dialing requirement is "tantamount to preempting the states with regard to dialing parity for intrastate calls."[124] NYDPS also argues that the Commission has not met the Supreme Court's standard for preemption of an activity traditionally regulated by the states. In addition, the NYDPS asserts that our jurisdiction with respect to numbering administration is limited to the "coordination and distribution" of telephone numbers under the NANP.[125] Several other parties also contend that because state commissions are best positioned to evaluate local conditions and make determinations as to whether 10-digit dialing is necessary, the Commission should not impose an inflexible 10-digit dialing requirement.[126] In addition, NYDPS contends that the 10-digit dialing mandate will force carriers to invest in more switching equipment to handle the additional holding time occasioned by dialing 10 instead of 7 digits and unnecessarily burden consumers with dialing additional digits when placing local calls.[127] Jubon argues that service providers will be forced to supply an informational announcement noting that the call was incorrectly dialed and be forced to supply additional telephone central office equipment, call processing, and message handling capacity without receiving additional revenue.[128] NYNEX and the Pennsylvania

[121] *People of the State of New York and Public Service Commission of the State of New York v. FCC and the United States of America*, No. 99-3015, slip op. at 1 (2d Cir. March 26, 1999) (order granting stay).

[122] 47 U.S.C. § 152(b).

[123] NYDPS Petition at 4-5; NYDPS Stay Petition at 9-12; NYDPS Review Petition at 4-7.

[124] NYDPS Petition at 3; NYDPS Stay Petition at 6-7; NYDPS Review Petition at 3-4.

[125] NYDPS Supplemental Petition at 8 (citing People of the *State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997)). *See also* NYDPS Stay Petition at 8; NYDPS Review Petition at 3.

[126] NYNEX Petition at 13; Bell Atlantic Opposition at 3; Pennsylvania Commission Petition at 2.

[127] NYDPS Petition at 8.

[128] Jubon Engineering Petition at 7.

Commission assert that 7-digit local dialing for intra-NPA calls and 10-digit dialing for inter-NPA calls would be easier and less confusing to customers because it would be less disruptive of local dialing patterns.[129] Jubon suggests that the Commission mandate or permit 11-digit local dialing with a "1" + 10 digit format because the public is already familiar with the "1" + 10 digit toll dialing concept for long distance numbers.[130] MFS argues that some customers continue to believe that calls to an overlay area code are long distance calls, and this belief creates a disparity between the perceived value of the old area code versus the new overlay area code.[131]

32. The NYDPS also requests that we consider changing the existing numbering plan and that we formally investigate changes to the numbering plan that would, in general, minimize the number of digits customers must dial to place calls.[132] The NYDPS states that the feasibility of 8-digit telephone numbers (which would increase the supply of numbers) should be examined thoroughly before 10-digit dialing is mandated for local calls.[133] In contrast, MFS contends that mandatory 10-digit dialing does not adequately address the anticompetitive effects of overlays but notes that the Commission should maintain the 10-digit dialing requirement if it continues to permit overlays.[134] AirTouch, MCI, and TCG argue that the elimination of mandatory 10-digit dialing would impede competition because potential customers would be reluctant to subscribe to the services of a competitive LEC or new entrant service provider as they would mostly have numbers available to offer customers from the overlay area code while an incumbent LEC would have more numbers available to offer customers in the old area code.[135] AirTouch states that incumbent LECs will be able to assign more numbers from the old area code to customers "due to the large supply of numbers they have been able to stockpile as the result of temporary shelving of returned telephone numbers."[136] Several petitioners note that, if the Commission continues to allow the implementation of area code overlays, then it should retain the 10-digit dialing requirement because it eliminates

[129] NYNEX Petition at 13; *see* Pennsylvania Commission Petition at 4.

[130] Jubon Engineering Petition at 4-5.

[131] MFS Petition at 6.

[132] NYDPS Petition at 11.

[133] *Id.*

[134] MFS Opposition at 7-8.

[135] AirTouch Reply at 3; MCI Opposition at 3; TCG Opposition at 9-10.

[136] AirTouch Reply at 3.

local dialing disparity and helps to ensure competitive neutrality.[137] AirTouch, MCI, and Teleport assert that incumbent LEC customers, most of whom would have numbers in the old area code, would only have to dial 7 digits to call others with numbers in the old area code while customers subscribing to the competitive LEC or new entrant service provider, most of whom would more likely have numbers assigned in the new overlay area code, would have to dial 10 digits to place calls to reach customers in the old area code.[138] AirTouch notes that wireless carriers typically have a higher fill factor per NXX code (over 90%) than do incumbent LECs (approximately 50%); thus, wireless customers will bear a disproportionate burden of 10-digit dialing.[139]

33. The Pennsylvania Commission and the NYDPS point to interim and long-term number portability as an alternative solution to mitigating the potential dialing disparity problems between customers in the old and new area codes that the Commission's 10-digit dialing requirement seeks to address.[140] The Pennsylvania Commission states that number portability undermines the FCC's assumption that customers would find it less attractive to switch carriers because competing exchange service providers would have to assign their customers numbers in the new overlay area codes because incumbent LEC customers could switch to a competitive LEC and still retain their 7-digit telephone number.[141] Thus, the Pennsylvania Commission requests that the Commission "make an exception to the mandatory 10-digit dialing requirement when long-term number portability becomes available."[142] Further, NYDPS and NYNEX argue that the assumption that all of the competing carriers will be relegated to supplying numbers in the overlay code is erroneous because competitive LECs and other competing carriers will have a significant number of NXX codes assigned to them in existing area codes and thus will be able to assign telephone numbers to their customers from the old area codes.[143]

34. Both NYNEX and the NYDPS request that the Commission clarify that it does not

[137] AT&T Opposition at 15-16; *see* Cox Opposition at 2; MCI Opposition at 3; MFS Opposition at 7-8; Sprint Opposition at 8; TCG Opposition at 8-10; U S WEST Opposition at 12.

[138] *Id.* at 3; MCI Opposition at 3; TCG Reply at 11.

[139] AirTouch Reply at 3.

[140] NYDPS Petition at 7-8; Pennsylvania Commission Petition at 4-5.

[141] Pennsylvania Commission Petition at 5.

[142] *Id.* at 5.

[143] NYDPS Petition at 7; NYNEX Petition at 13-14.

intend to apply retroactively the mandatory 10-digit local dialing requirement to the 917 area code overlay implemented in New York City during 1992.[144] The 917 overlay plan currently allows 7-digit dialing within the same NPA and 1+10 digit dialing among the three NPAs in New York City, 212, 718, and 917.[145] Although Cox does not oppose the requests by NYNEX and NYDPS that the mandatory 10-digit local dialing requirement be applied to prospective overlay plans only, Cox notes that the 917 overlay should not serve as a model of an all-services overlay plan successfully implemented without the 10-digit dialing requirement, because the 917 overlay is not an all-services overlay, was not introduced in a competitive market and is not used for regular residential and business telephone lines.[146]

35. We deny petitioners' requests for reconsideration of our rule that all-services area code overlay plans include mandatory 10-digit dialing. We also deny the NYDPS application for review of the *July 20 New York Order*.[147] We reaffirm that such overlay plans must include 10-digit dialing for all local calls between and within area codes in the area served by an overlay.[148] We emphasize, however, that states are authorized to continue overseeing the introduction of new area codes insofar as they are consistent with our numbering administration guidelines.[149] In our *Local Competition Second Report and Order*, we clarified the *Ameritech Order*[150] by explicitly prohibiting service-specific or technology-specific area code overlays and instituted two conditions that a state must include in any area code overlay plan: 10-digit local dialing and the allocation of one NXX per carrier.[151] We adopted a mandatory 10-digit local dialing requirement to ensure that local dialing disparity does not deter competition in the local telecommunications marketplace. We explained that in an overlay situation, competing exchange service providers, most of which would be new entrants to the market, would have to assign to their customers numbers in the new area code while incumbent LECs would be able to assign to their customers numbers in the old area code. Thus, competitive LECs' customers in the new overlay code would have to dial 10 digits much more often than the incumbent LECs' customers in the old area code, thereby making it less attractive for customers to switch to competitive LECs.[152]

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[144] NYDPS Petition at 9, n.1; NYNEX Petition at 14.

[145] NYNEX Petition at 14.

[146] Cox Opposition at 3-4

[147] The NYDPS request for a stay is moot in light of the Second Circuit's March 26 stay order.

[148] The New York City 917 overlay area code permits 7-digit dialing within an NPA and thus, does not meet our 10-digit local dialing requirement for implementation of an overlay. We, however, do not apply the mandatory 10-digit local dialing requirement to the 917 area code overlay because its 1992 implementation preceded the adoption of rule 52.19(c)(ii), which became effective October 6, 1996. We also note that on August 10, 1999, the Illinois Commerce Commission petitioned the Commission for a temporary waiver of the rules requiring 10-digit dialing in overlay areas.

36. We disagree with the NYDPS assertions that the Commission's authority to impose mandatory 10-digit local dialing as a condition for the implementation of an area code overlay is limited by section 2(b) of the Act,[153] that the Commission has not met the Supreme Court's standard for preemption of an activity traditionally regulated by the states, and that the 10-digit dialing requirement is not the type of activity envisioned as a function of numbering administration.[154] In *Louisiana Public Service Commission v. FCC*,[155] the Supreme Court decided that, to overcome section 2(b)'s limits on the Commission's jurisdiction with respect to intrastate communications service, Congress must either modify section 2(b) or grant the Commission additional authority.[156] In section 251(e)(1) of the Act, Congress explicitly granted such additional authority to the Commission when it mandated that the Commission has "exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States."[157] In the *NANP*

The Illinois Commission states that it is implementing several overlay area codes within the next 18 months, and argues that a waiver is justified because requiring 10-digit dialing in a "piecemeal fashion" as each overlay is implemented will exacerbate customer confusion and deny the Illinois Commission and carriers time to develop and administer a comprehensive customer education program. Comments in response to the petition were due on September 16, 1999. Reply comments are due on September 30, 1999. *See* Common Carrier Bureau Seeks Comment on the Illinois Commerce Commission's Petition for Expedited Temporary Waiver of 47 C.F.R. 52.19(c)(3)(ii), *Public Notice*, NSD File No. L-99-65, DA 99-1631 (rel. August 16, 1999).

[149] *Local Competition Second Report and Order*, 11 FCC Rcd at 19512 ¶ 272.

[150] Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD File No. 94-102, *Declaratory Ruling and Order*, 10 FCC Rcd 4596 (*Ameritech Order*).

[151] We rescind the requirement of one NXX code per new entrant in section 52.19(c)(3)(iii) of the Commission's rules. *See supra* ¶¶ 22-27.

[152] *Local Competition Second Report and Order*, 11 FCC Rcd at 19518-19 ¶ 287.

[153] 47 U.S.C. § 152(b).

[154] NYDPS Supplemental Petition at 7-8.

[155] *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986) (*Louisiana PSC).*

[156] *See Louisiana PSC,* 476 U.S. at 368-369.

[157] 47 U.S.C. § 251(e)(1). We also disagree with the NYDPS that section 2(b) deprives the Commission of jurisdiction under section 251(e)(1) of the Act over intrastate dialing patterns and is limited to "the coordination and distribution of all telephone numbers in the United States." The NYDPS relies on a misreading of the Eighth Circuit's ruling in *California v. FCC*, 124 F.3d 934 (8th Cir. 1997). A plain reading of *California v. FCC* indicates that the case has no application to the issue of the Commission's jurisdiction over intrastate dialing patterns. In that portion of

Order, the Commission noted that access to national numbering resources is essential to entities desiring to participate in the telecommunications industry; it pointed out the linkage between central office code availability and the growth of competition in the LECs' core businesses; and it concluded that the functions associated with NPA code administration should be centralized and transferred from the LECs to a NANP Administrator.[158] Section 2(b) thus imposes no limitation upon the Commission's exclusive authority under section 251(e) to perform ongoing numbering administration functions.[159]

37. Further, the NYDPS's attempt to characterize this issue as a "dialing parity" issue under section 251(b)(3) is based on an erroneous reading of the Act. "Dialing parity" is a defined term in the Act,[160] that requires that a customer be able to access the carrier of his or her choice without having to uses any access codes. Although the Commission, in its discussion of the 10-digit dialing rule, refers to the dialing "disparity" that would occur absent the rule, the Commission's decision to require 10-digit dialing has nothing to do with "access codes," and nowhere is based on

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California devoted to numbering administration, the Eighth Circuit declined to rule on whether the methodology that the Commission adopted for cost recovery of the administration of the NANP was "competitively neutral," as required by the Act. The court held that the issue was not ripe for review. 124 F.3d at 944. In the introductory section to this part of the Order, the court stated that "[n]umbering administration involves the coordination and distribution of all telephone numbers in the United States." The Eighth Circuit made no reference to Commission jurisdiction pursuant to section 251(e)(1), let alone rendered a decision limiting that jurisdiction. The NYDPS argument is an attempt to bootstrap a remark made in dicta in a decision completely irrelevant to this issue into an Eighth Circuit ruling limiting the numbering administration jurisdiction of the Commission. Even if the Eighth Circuit's language had some relevance to the Commission's jurisdiction over intrastate dialing patterns, by using the word *involves*, the Eighth Circuit merely indicates that it regards the coordination and distribution of all telephone numbers as "included as a necessary circumstance" of the administration of the NANP (*see* Random House Dictionary of the English Language (College Edition 1968)), not as the defining limit of the activities over which the Commission had jurisdiction. Finally, any validity that the NYDPS argument that section 2(b) precludes Commission jurisdiction over all aspects of numbering administration has been discredited by the Supreme Court's recent holding in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) that FCC jurisdiction "always follows where the Act applies." *Id.* at 731. Thus, the NYDPS argument that the Commission's exclusive jurisdiction over numbering administration does not extend to intrastate dialing patterns is unsupported by the statute, industry practice and case law.

[158] *NANP Order*, 11 FCC Rcd at 2620-21 ¶ 77.

[159] In the *Local Competition Second Report and Order* the Commission stated that states must act consistently with federal numbering guidelines concerning area code relief designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers. *Local Competition Second Report and Order*, 11 FCC Rcd at 19516-17 ¶ 281.

[160] 47 U.S.C. § 153(15).

section 251(b)(3) of the Act. Rather, the Commission's rule is grounded in its exclusive jurisdiction over the administration of the North American Numbering Plan as granted by section 251(e)(1) of the Act.

38. In addition, the *Ameritech Order*, which preceded the enactment of section 251(e), concluded that the Commission may preempt state actions concerning the NANP.[161] Section 251(e)(1) clearly augments this authority. Although the Commission has exclusive jurisdiction over numbering administration issues, the Commission stated in the *Local Competition Second Report and Order* that state commissions were uniquely situated to determine what type of area code relief best accommodates local circumstances[162] and authorized states to resolve matters involving the implementation of new area codes, subject to Commission guidelines for numbering administration.[163] The Commission retains authority to set policy with respect to all facets of numbering administration in the United States.[164]

39. We agree with AT&T, MCI, Sprint, TCG, and U S WEST that confusion regarding the dialing of toll versus local calls quickly dissipates as consumers become accustomed to local 10-digit dialing. We reject, however, Jubon's proposal that we adopt 1 + 10-digit dialing for local numbers. The public interest is well-served by a uniform dialing pattern, such as 10-digit dialing for all local calls and 1 + 10 digits for all long distance calls, which clearly differentiates between local and toll calls. We also decline to consider the NYDPS 8-digit telephone number plan in this proceeding, as the NPA-NXX-XXXX structure for telephone numbers was not an issue raised in either the *Local Competition NPRM* or the *Local Competition Second Report and Order* and thus, comment was not solicited on that issue. In addition, we reject the contentions of NYDPS and Jubon that we should abandon the 10-digit dialing requirement because it will force carriers to invest in more switching equipment to handle additional holding time occasioned by dialing 10 instead of 7 digits and informational announcements. Parties have presented no information to support their contentions. Moreover, as we balance the public interest served by pro-competitive policies in the telecommunications marketplace against any costs that carriers may incur, such as costs of consumer education or modest incremental additions to switching equipment, we believe that the public generally is best served by our rule requiring that all carriers' customers employ similar dialing patterns when making local calls.

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[161] *Ameritech Order*, 10 FCC Rcd at 4602 ¶ 14.

[162] *Local Competition Second Report and Order*, 11 FCC Rcd at 19517 ¶ 283.

[163] *Id.* at 19516 ¶ 281.

[164] *Id.* at 19512 ¶ 271.

40. Further, we do not agree with claims made by the Pennsylvania Commission and NYDPS that interim and long-term number portability will reduce the competitive disparity that the Commission's mandatory 10-digit dialing requirement seeks to address. In the *Local Competition Second Report and Order*, the Commission required mandatory 10-digit dialing for all local calls in areas served by overlays to minimize any local dialing disparity that could otherwise deter competition.[165] We explained that competing local exchange service providers, most of which would be new entrants to the market, would have to assign numbers in the new area code to their customers while incumbent LECs would be able to assign numbers in the old area code to their customers.[166] The Bureau recently rejected a Pennsylvania Commission petition for waiver of the 10-digit dialing requirement.[167] The Bureau concluded that although interim and long-term number portability will allow an incumbent LEC customer to retain its telephone numbers, including the area code, if that customer switches to a competitive LEC, number portability does not ameliorate the dialing disparity that would exist between the old area code and the new area code sufficiently to justify the elimination of the 10-digit dialing requirement.[168] For example, most new numbers would likely be assigned from the overlay. Thus, the Bureau found that new customers in the area and existing customers who obtain additional lines would not "port" numbers from the old NPA. Because the incumbent would be likely to have more numbers in the old NPA than competitive LECs, it would be better able to assure its new customers the convenience of 7-digit dialing for the majority of their local calls. The Bureau acknowledged that competitive LECs would have NXXs in some rate centers in the old NPA, and consequently may be able to assign numbers in that NPA to some customers, but concluded that, overall, it is more likely that the incumbent LEC will be able to assign a number in the old NPA because the incumbent LEC will have more NXX numbers in more rate centers in the old NPA than competitive LECs would have. As a consequence, the Bureau concluded that for the new customers' lines and the existing customers' second lines in the new NPA, there would continue to be a dialing disparity.[169] We agree with the Bureau, and conclude that, in the absence of mandatory 10-digit dialing, a customer could find it less attractive to obtain service from a competitive LEC solely because the incumbent LEC would have access to a larger pool of NXXs in the old NPA.

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[165] *Local Competition Second Report and Order*, 11 FCC Rcd at 19518 ¶ 286.

[166] *Id.* at 19519 ¶ 289.

[167] Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief, CC Docket No. 96-98, *Order*, 12 FCC Rcd 3783, 3792-93 ¶¶ 17-19 (1997) (*Pennsylvania Commission Waiver Order)*.

[168] *Id.* at ¶ 18.

[169] *Id.* at ¶ 19.

41. We note that long term number portability is substantially deployed in the top 100 MSAs, thus minimizing the current relevance of interim number portability to our 10-digit dialing rule. We agree with the Bureau's conclusion in the *Pennsylvania Commission Waiver Order* that without the 10-digit dialing requirement, technical drawbacks inherent in implementing interim number portability prevent interim number portability from overcoming the anti-competitive effects of an area code overlay.[170] The remote call forwarding (RCF) service used to achieve interim number portability creates a slight dialing delay for customers as their calls are forwarded from the old number to the new number.[171] In the *Number Portability Order*, we also found that the current, technically feasible methods of providing number portability, such as RCF, have other significant limitations.[172] For example, customers that obtain interim number portability through RCF lose caller ID and certain other local area signalling services.[173] In addition, the transmission quality of calls for customers using RCF is sometimes degraded.[174] For these reasons, even though interim number portability allows a caller to retain his or her 7-digit number when the caller changes carriers, it does not create a level playing field between incumbent LECs and competitive LECs,[175] nor does it alleviate local dialing disparity between the old area code and the new overlay area code.

42. Moreover, the Commission recognized in the *Local Competition Second Report and Order* that long-term number portability would "reduce the anti-competitive impact of overlays"[176] but would not obviate the need for mandatory 10-digit dialing.[177] Although it will allow customers to change service providers without the service and technical limitations of interim number portability, long-term number portability does not overcome the dialing disparity that would exist between the old NPA and the new NPA.[178] When an area code overlay is first implemented, the

[170] *Id.*

[171] *Id.*

[172] *Number Portability Order,* 11 FCC Rcd at 8409-10 ¶¶ 110-111.

[173] *Pennsylvania Commission Waiver Order*, 12 FCC Rcd at 3793 ¶ 18.

[174] *Id.*

[175] *Id.*

[176] *Id.* at 3793 ¶ 19.

[177] *Id.*

[178] *Id.*

majority of customers will be in the old area code.[179] If the customers located in the old area code were to enjoy the convenience of dialing only 7 digits to contact one another and had to dial 10 digits to contact customers in the new area code, telephone numbers in the old area code would be more desirable. New customers are likely to seek the same convenience by requesting numbers from the old area code. Further, because the Commision has extended the date by which CMRS providers must implement long term number portability until November 24, 2002,[180] wireless customers would not enjoy even the limited benefit that long term number portability offers.

43. NYDPS and NYNEX assert that competitive LECs and other competing carriers have a significant number of NXX codes assigned to them in existing area codes and thus will be able to assign telephone numbers to their customers from the old area code. This claim fails to take into account the current system of distributing NXXs in association with geographic rate centers. Some states require that wireline competitive LECs use the incumbent LEC rate plans, which require that a competitive LEC receive an NXX from each rate center that a competitive LEC wishes to serve. The incumbent LEC is likely to have NXXs in each rate center, whereas individual competitive LECs or other service providers may only have NXXs in a few rate centers. Consequently the competitive LECs and other entities may only be able to serve customers in limited geographic areas within the old area code or else they will need additional NXXs thereby creating increasing requests for NXXs in the old area code. Moreover, it is likely that some carriers or telephone exchange service providers may be new entrants to the market and have no NXXs in the old area code. Thus, as competitive LECs and new entrants expand their service areas or begin to offer services, they will have to obtain NXXs from the overlay area code. Without mandatory 10-digit dialing between and within area codes, dialing disparity between incumbent LECs and competitive LECs will exist and pressure for the scarce numbering resources will push area codes into jeopardy at a faster rate.

44. Further, in the *Numbering Resource Optimization Notice*, the Commission recognized that North American Numbering Council (NANC) had identified mandatory, 10-digit dialing as a means of improving the use of assigned area codes.[181] According to the *Numbering Resource Optimization Notic*e, the NANC reported that 10-digit dialing would eliminate unused, or "protected," central office codes,[182] and could also increase the number of central office codes

[179] *Local Competition Second Report and Order,* 11 FCC Rcd at 19519 ¶ 287.

[180] *CMRS LNP Forbearance Order*, (forbearing from requiring CMRS providers to supply service provider number portability in the top 100 Metropolitan Statistical Areas until November 24, 2002), *supra* n.80.

[181] *See Numbering Resource Optimization Notice* at ¶ 122-125.

[182] *Id.* ¶ 123.

available in an area code by allowing central office codes to begin with a zero or a one.[183] The Commission also reported that the NANC concluded that the adoption of 10-digit dialing might eliminate disincentives for states to adopt area code overlays.[184] In the *Numbering Resource Optimization Notice*, the Commission seeks comment on whether it should adopt nationwide ten-digit dialing, or whether we should encourage states to implement ten-digit dialing as a priority.[185] Although 10-digit dialing as a number optimization measure is not an issue in the instant record, we believe that absent a significant legal or policy reason for revising the 10-digit dialing rule, we should not place an unnecessary obstacle to potential number use optimization measures currently under consideration by the industry, state commissions, consumer groups, and this Commission.

45. In affirming the 10-digit dialing rule, we also find that the NYDPS has failed to show that the Commission should grant the NYDPS Application for Review of the Common Carrier Bureau's *July 20 New York Order*. Our rules of practice specify that one of five criteria must be met to warrant Commission review of any action taken pursuant to delegated authority.[186] The NYDPS's argument appears to depend on two of these enumerated factors: (1) that the action taken by the Bureau pursuant to delegated authority was in conflict with statute, regulation, case precedent, or established Commission policy;[187] and (2) that the action involved application of precedent or policy which should be overturned or revised.[188] Regarding the first factor, the NYDPS argues that the Bureau's order conflicts with the Act's purported preservation of state jurisdiction over intrastate communications.[189] As we noted in paragraph 35, *supra*, in the *Local Competition Order*, this Commission concluded that section 251(e)(1) of the Act confers jurisdiction to this Commission over all facets of administration of the NANP, including the establishment of dialing patterns. The NYDPS also argues that the Eighth Circuit, by vacating our intrastate dialing parity rules, precludes our authority over intrastate dialing patterns as they apply to the administration of the NANP. This argument has been rendered moot by the Supreme Court's decision reversing the Eighth's Circuit's

[183] *Id.*

[184] *Id.*

[185] *Id.* at ¶ 126.

[186] *See* 47 C.F.R. § 1.115(b)(2)(i)-(v).

[187] 47 C.F.R. § 1.115(b)(2)(i).

[188] 47 C.F.R. § 1.115(b)(2)(iii).

[189] NYDPS Review Petition at 8.

vacation of the Commission's dialing parity rules.[190] Further, even if this argument had some validity, as we discuss in paragraph 36, *supra*, the NYDPS attempt to characterize the 10-digit dialing rule as a "dialing parity" issue under section 251(b)(3) is based on an erroneous reading of the Act. Thus, the Bureau's denial of the NYDPS Petition for Waiver was entirely consistent with the Act, our regulations, precedent and policy. Regarding the second factor, the NYDPS argues that we should overturn our 10-digit dialing rule. Our reasons for denying this request are fully set forth above in our discussion of the NYDPS petition for reconsideration of the 10-digit dialing rule. We thus deny the NYDPS Application for Review.

[190] *See AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

5. 10-digit Dialing for National 555 Numbers. 10-digit Dialing for National 555 Numbers. 10-digit Dialing for National 555 Numbers

a. *Background*

46. In the *Local Competition Second Report and Order*, the Commission's requirement that there be mandatory 10-digit dialing between and within the area codes affected by the overlay made no special provision for national 555 numbers.[191] A 555 number is a unique line number in the 555 NXX assigned to a particular entity, and is used to reach a wide variety of information services.[192] 555 numbers are assigned according to guidelines developed by the ATIS-sponsored Industry Numbering Committee (INC).[193] 555 numbers may be assigned for either national or local use. Under the INC guidelines, a 555 number will be designated as a national number if it is to be used in at least 30% of all NPAs, states, or provinces in the NANP area, and cannot be assigned to more than one entity.[194] Non-national 555 numbers differ from national 555 numbers in that they are assigned to an entity for use in a specific geographic area or areas, and may be assigned to multiple entities, assuming those entities wish to use the non-national number in different geographic NPAs.[195] As of September, 1998, over 2,487 national and 381 local 555 numbers had been assigned by the NANPA.[196]

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[191] *Local Competition Second Report and Order*, 11 FCC Rcd at 19518 ¶ 287. Section 52.19(c)(3)(ii) of our rules, 47 C.F.R. § 52.19(c)(3)(ii), specifically states that there must be 10-digit dialing within and between (rather than among) all area codes in the geographic area covered by the overlay area code. Industry guidelines do contemplate a "multiple overlay," in which a new NPA would be assigned to overlay multiple existing NPAs needing relief. *NPA Code Relief Planning & Notification Guidelines* (INC 97-0404-016), at § 6.3.4 (reissued January 27, 1999). Both Pennsylvania and Texas have instituted multiple overlays.

[192] The most commonly recognized example of a 555 number is that used for directory assistance information (555-1212).

[193] 555 NXX Assignment Guidelines, INC 94-0429-002555 (April 19, 1996) (*555 NXX Assignment Guidelines*).

[194] *See* 555 NXX Assignment Guidelines, § 3.1.1.

[195] *Id.*, § 3.1.2.

[196] *See* <http://www.nanpa.com>.

b. *Discussion*

47. WP requests that we clarify whether ten digits must be dialed to complete calls to national 555 numbers in areas served by overlay area codes.[197] WP states that it has been working with this Commission, the public service commissions of Maryland, Virginia, and the District of Columbia, and with Bell Atlantic to develop a service that would allow WP and other information service providers to offer low-cost, local information services over the telephone to consumers, initially in the District of Columbia metropolitan area and then throughout the nation.[198] WP states that ensuring that customers are able to gain access to this service via a telephone number that is easy to remember, easy to use, and provides uniform dialing on a regional or national basis is critical to the success of WP's (and other like) information services.[199] According to WP, the principal value of national 555 numbers is the ease of recall and access that accompanies the ability to complete nationwide calls by dialing seven digits.[200]

48. WP contends that the 10-digit dialing requirement for area code overlays should not apply to national 555 numbers.[201] The development of low-cost information services is in the public interest, WP argues, and enforcement of the 10-digit dialing requirement would undermine efforts to develop and market such services using national 555 numbers.[202] WP states that the competitive concerns that led the Commission to impose the 10-digit dialing requirement do not apply to national 555 numbers because any customer, whether its local exchange carrier is the incumbent or a new entrant, would be able to reach a national 555 number subscriber by dialing seven digits.[203] Further, WP argues that national 555 numbers were developed and assigned to provide abbreviated, uniform national dialing, and that this goal will be thwarted if the 10-digit dialing requirement is

[197] WP Petition at 1.

[198] *Id.* at 2.

[199] *Id.*

[200] *Id.* at 3. Communications Venture Services, Inc. (CVS) supported WP's petition, and also requested the Commission to recognize that national 555 numbers may be dialed with seven digits. CVS alleges that 7-digit dialing for 555 numbers is technically easier to implement than 10-digit dialing, and that there is a public need for 7-digit dialed access and exchange services, particularly for older callers and persons with impaired short term memory. CVS Opposition at 2.

[201] *Id.* at 4.

[202] *Id.*

[203] *Id.* at 5.

applied to these numbers.[204]

49. WP states that exempting national 555 numbers from the Commission's 10-digit dialing requirement also would be consistent with industry-developed guidelines. According to WP, the technical service interconnection arrangements developed by the Industry Carriers Compatibility Forum (ICCF) contemplate that 555 numbers assigned on a national basis could be dialed using only seven digits from any location in any NPA. The industry guidelines state that, whether geographic NPA relief activity is accomplished through geographic splits, overlays, or boundary realignments, the holders of national 555 numbers will retain the right to request activation of the same number in the new NPA.

50. Alleging that several carriers oppose the use of 555 line numbers by companies not providing directory assistance, Telco Planning opposes WP's request.[205] Telco Planning also asserts that information service providers have rejected 7-digit dialing as an abbreviated dialing arrangement, preferring instead arrangements that allow callers to reach them dialing three or four digits.[206] Telco Planning argues that 900 numbers should be used for information services.[207] Using 555 numbers, which are traditionally used for directory assistance, for specialty information services would cause end-user confusion and technical problems. Further, allowing specialty information service providers to use 555 could force carriers to provide blocking for 555, which may cause subscribers to be denied directory assistance.[208]

[204] *Id.*

[205] Telco Planning Opposition at 1-2.

[206] *Id.* at 3.

[207] *Id.* at 4.

[208] *Id.*

51. We clarify that state commissions may allow callers to dial national 555 numbers using only seven digits, even when the call is placed from a geographic area that has an overlay area code. We make this clarification subject to the qualification that callers in both the old area code and the new overlay area code must be able to dial seven digits to reach the national 555 numbers. If all callers are able to reach the national 555 numbers using only seven digits, regardless of the carrier that provides the callers' service, such calls would not cause the type of anticompetitive effects that can be avoided in other cases only by requiring 10-digit dialing where an area code overlay has been implemented. If technical problems prevent callers in either the old area code or the new overlay area code from enjoying the benefits of seven-digit dialing for national 555 numbers, we will require that all customers in the area covered by the overlay code and the old area code must dial ten digits to reach national 555 numbers. Subject to this limitation, based on their knowledge of specific local circumstances, such as the service arrangements made by the holder of the national 555 number and the local dialing plan, state commissions may determine if 7-digit dialing for national 555 numbers is feasible.[209]

52. We do not address Telco Planning's comments. The question of whether 555 numbers should be used for purposes other than directory assistance is beyond the scope of this proceeding.

[209] *See* ICCF 555 Technical Service Interconnection Arrangements, ICCF 96-0411-014 (April 11, 1996) at 3 n. 2 (local dialing plans may impact the feasibility of using seven digits to dial 555 numbers).

6. Takebacks and Grandfathering of Wireless Numbers in a Geographic Area Code Split. Takebacks and Grandfathering of Wireless Numbers in a Geographic Area Code Split.Takebacks and Grandfathering of Wireless Numbers in a Geographic Area Code Split

a. *Background*

53. Once a state implements a NPA split, wireline customers on one side of the split retain their old area code and 7-digit number, and customers on the other side of the split get a new area code, but retain their old 7-digit number. The process for wireline customers requires no action on the part of the customers on either side of the split because the necessary changes for routing calls with the new area code occur within the carriers' networks. Many parties are concerned about the effects an NPA split has on wireless customers, however. The process will not be transparent to the wireless customer, as it is to the wireline customer. Instead, because of the means by which wireless telephone calls are transmitted, wireless customers must have their telephones reprogrammed to surrender the old number and receive a new number in the new NPA. We call this type of change necessitated by a NPA geographic split a "wireless number takeback." Some states have allowed wireless customers who are physically located in the new area code to keep their entire 10-digit numbers from the old area code when a geographic split occurs. We call this practice "wireless grandfathering."

54. In the *Local Competition Second Report and Order*, the Commission concluded that the wireless-only area code overlays that the Texas Commission proposed for the Dallas and Houston areas violated the Commission's *Ameritech Order*, which prohibited a wireless-only overlay. We found that the Texas Commission's proposal was inconsistent with our clarification of the *Ameritech Order* in the *Local Competition Second Report and Order,* which prohibited all technology-specific overlays.[210] Parties filing comments on the Texas Commission's proposal expressed concerns regarding the Texas Commission's statement that if the proposed wireless-only overlays were found to be unlawful, it would consider a mandatory takeback of wireless numbers under a geographic split plan in order to balance the inconvenience and confusion caused by the number changes necessitated by a split. We did not act to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan, because:

> In a geographic split, roughly half of the customers in the existing NPA, including wireless customers, will have to change their telephone numbers. We recognize that wireless customers may need to have their equipment reprogrammed to change their

[210] *Local Competition Second Report and Order*, 11 FCC Rcd at 19527 ¶ 305.

> telephone number, and that this will inconvenience wireless customers to some extent. This illustrates the fact that geographic splits also have burdensome aspects. Our goal is to have technology-blind area code relief that does not burden or favor a particular technology. Requiring approximately half of the wireless customers and wireline customers to change numbers in a geographic split is an equitable distribution of burdens. This is the kind of implementation detail that is best left to the states.[211]

55. On October 9, 1996, the Commonwealth of Massachusetts Department of Public Utilities (DPU) requested a declaratory ruling from the Commission.[212] The DPU was developing an area code relief plan in response to NXX code depletion that was occurring in two area codes in eastern Massachusetts, 617 and 508. The DPU stated that it had been presented with two options to address the problem. The first, an overlay, would prevent existing customers from having to change their 10-digit telephone numbers. The second, a geographic split, would split each of the two depleted area codes into a north and south geographic area and give one of the areas a new area code.

56. The DPU asked the Commission to clarify whether, in a geographic split scenario, existing wireless customers could be permitted to retain their current area code or whether such an arrangement would violate the *Second Report and Order*. Under the DPU's proposal, existing wireless customers would retain their 10-digit telephone numbers regardless of where they were geographically situated, while new wireless customers would be assigned 10-digit telephone numbers depending on the boundaries defined by the geographic split. The DPU also requested an opinion on whether such a proposal would require 10-digit local dialing. The Commission sought comment on the DPU's petition.[213]

57. On January 23, 1997, the DPU issued an Order adopting an area code relief plan for the 617 and 508 area codes, without waiting for a ruling from the Commission on its October 9 petition.[214] The Order stated that a geographic split plan is the appropriate method for area code

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[211] *Id.* at 19528 ¶ 308.

[212] *See Petition for Declaratory Ruling by Commonwealth of Massachusetts Department of Public Utilities*, NSD-L-96-15 (Oct. 9, 1996)(*DPU Petition*).

[213] *See* FCC Seeks Comment on Petition for Declaratory Ruling Filed by Massachusetts Department of Public Utilities Regarding Area Code Relief Plan for Area Codes 508 and 617, *Public Notice*, NSD File No. 96-15, 11 FCC Rcd 13921 (1996). For ease of reference, comments on the DPU petition will be referred to as "MDPU Comments."

[214] *See Investigation by the Department of Public Utilities on its Own Motion to Adopt a Plan for Addressing the Limited Number of Exchange Codes Remaining in Eastern Massachusetts' 617 and 508 Area Codes*, D.P.U. 96-61

relief.[215] Concerning parties' requests that wireless customers be permitted to grandfather their numbers, the DPU found that permitting wireless subscribers to retain their existing area code would present a number of technical problems.[216] The DPU noted that wireless and landline customers share many NXX codes. Grandfathering wireless customers would require a takeback of numbers from the landline customers, which would result in a minimum of 19,500 customers being assigned a new 10-digit number.[217] Alternatively, the DPU stated that both the wireless and landline customers sharing NXX codes prior to the split could be grandfathered, thus causing some municipalities to have more than one area code. The DPU stated that both alternatives would create customer confusion.[218] Also, the DPU stated that because of the way that wireless and landline carriers are interconnected, grandfathering wireless customers would require additional switch translations and system modifications, resulting in additional costs and delays of area code relief.[219]

58. On May 2, 1997, the DPU issued an Order reconsidering its earlier area code relief Order.[220] In its Reconsideration Order, the DPU responded to allegations that it had not specified whether it intended to allow wireless customers who are served by Type 2 interconnection to retain their existing area codes.[221] The DPU acknowledged that its Order had been silent on the issue of whether Type 2 wireless numbers could be grandfathered.[222] It granted the motions for clarification, stating that, because Type 2 wireless customers do not share exchange codes with landline customers, the DPU's technical concerns raised in its order did not apply. The DPU clarified its

(1997) (*Massachusetts DPU Order*).

[215] Massachusetts DPU Order at 15.

[216] *Id.* at 17.

[217] *Id.*

[218] *Id.*

[219] *Id.* at 17-18.

[220] *See Investigation by the Department of Public Utilities on its Own Motion to Adopt a Plan for Addressing the Limited Number of Exchange Codes Remaining in Eastern Massachusetts' 617 and 508 Area Codes*, *Order on Motions by Bell Atlantic NYNEX Mobile for Clarification and/or Reconsideration, NYNEX for Clarification and Reconsideration and Cellular One for Clarification*, D.P.U. 96-61-A (1997) (Reconsideration Order).

[221] Type 2 cellular numbers (available to subscribers from tandem switches), unlike Type 1 numbers (based on wire centers) are not tied to a geographic location, and therefore, there is no technical requirement forcing wireless numbers to be changed.

[222] *Reconsideration Order* at 5.

initial decision, and found that grandfathering of existing Type 2 wireless should occur.[223]

59. *Wireless Takebacks*. Several parties have filed petitions requesting that the Commission reconsider its decision not to prohibit the takeback of wireless telephone numbers based on their assertions that wireless number takebacks require wireless carriers to bear a disproportionate share of the burden associated with a geographic split and are not technology-blind.[224]

60. AT&T argues that we should clarify that state commissions may rely on voluntary wireless number "givebacks," but may not require wireless customers to switch their telephone numbers to the new NPA in a geographic split.[225] At a minimum, AT&T contends that the Commission should clarify that it would not be inequitable for a state commission to permit wireless customers to keep their telephone numbers in the event of an NPA split.[226] Further, AT&T states that takebacks are disproportionately burdensome to wireless customers because wireless customers must return their telephones for reprogramming.[227] Finally, AT&T observes that takebacks are technologically unnecessary because wireless telephones merely have a billing address and are not located on one side of a line dividing a NPA in a geographic split.

61. AirTouch/PowerPage observes that there are two different types of wireless interconnection, each of which would be affected differently by a wireless takeback. According to AirTouch/PowerPage, Type 1 numbers are wireless numbers that interconnect with the public switched telephone network through a central office. For Type 1 numbers subject to a geographic split, the telephone number will change if the central office serving the number is changed.[228] Type 2 numbers are wireless numbers that interconnect with the public switched telephone network through a tandem. For Type 2 numbers subject to a geographic split, the telephone number will not

[223] *Id.* at 5-6.

[224] AirTouch/PowerPage Petition at 16; AT&T Petition at 12-14; Arch Opposition at 3; PageNet Opposition at 2; U S WEST Opposition at 14-15; AirTouch Opposition at 2, 6 (the Commission should prohibit states from implementing mandatory wireless-only takebacks in connection with geographic area code splits). Reply at 1-2.

[225] AT&T Petition at 13, Reply at 8.

[226] AT&T Petition at 14.

[227] *Id.* at 13; *see also* SBC Petition at 25-27, Reply at 5-6; PageNet Opposition at 2; U S WEST Opposition at 14-15; AT&T Reply at 8.

[228] AirTouch/PowerPage Petition at 17.

change unless the NPA for the tandem is changed.[229] AirTouch/PowerPage states that CMRS paging carriers use a mix of Type 1 and Type 2 numbers.[230] AirTouch/PowerPage further states that both wireless and wireline telephone numbers will change as a result of a geographic split,[231] but alleges that under Texas' proposed plan, wireless carriers are required first to give back telephone numbers and then to require existing customers to change their telephone numbers in the new NPA.[232] AirTouch/PowerPage asserts that the proposed takeback of wireless telephone numbers is discriminatory because the Texas Commission plan contains a takeback of only wireless telephone numbers.[233] AirTouch/PowerPage also argues that the proposed takeback of wireless numbers violates the Commission's goal to have technology-blind area code relief.[234] It agrees that changing Type 1 numbers along with the rest of the numbers in their respective central offices would satisfy that goal, but that the forced change of Type 2 numbers would not because CMRS carriers are generally the only telecommunications carriers taking Type 2 numbers.[235] Therefore, requiring CMRS carriers with Type 2 numbers to change the NPA of one-half of their customers subjects them to burdens that other telecommunications carriers do not have.[236]

62. AirTouch/PowerPage asserts that the only technology-blind mechanism would be to allow CMRS carriers with Type 2 numbers to remain in the existing NPA and require Type 1 numbers to change with the underlying central office.[237] If the Commission disagrees that no action

[229] *Id.*

[230] *Id.*

[231] AirTouch/PowerPage Petition at 17.

[232] *Id.*; *see also* AirTouch Comments at 4.

[233] AirTouch/PowerPage Petition at 19.

[234] *Id.*

[235] Type 2 numbers are served by a tandem.

[236] AirTouch/PowerPage Petition at 20.

[237] *Id.; see also* PageNet Petition at 6 (Takebacks of Type 2 wireless numbers are neither technically required nor justified in terms of any equitable sharing of relief burdens. Type 2 wireless numbers are not tied to any fixed geographic location. Takebacks of Type 2 wireless numbers are, further, not justified because voluntary subscriber requests typically result in a level of number relief and carrier burden that is comparable to what occurs in the case of a mandatory number takeback.) *See also* AirTouch Opposition at 5; Arch Opposition at 3-4; PageNet Opposition at 2; PCIA Opposition at 3-4, Reply at 2-3; U S WEST Opposition at 14-15.

should be taken for Type 2 numbers, AirTouch/PowerPage contends that the Commission should permit wireless carriers to determine which Type 2 numbers will change as the result of a split.[238] Neither the NANP administrator nor any state commission should interfere with that determination if the wireless carrier has made provisions for a proportionate number of its telephone numbers to change upon implementation of the split.[239] Regarding wireline numbers and Type 1 wireless numbers, AirTouch/PowerPage asserts that determining which numbers will change is a ministerial task. The numbers served by central offices subject to the new NPA will change. Type 2 numbers, however, are not associated with any particular NPA because a tandem that serves them may serve both the old NPA and the new NPA.[240] Therefore, AirTouch/PowerPage argues that a "geographic" split with respect to these numbers is a misnomer.[241]

63. *The Massachusetts DPU Petition*. Several parties commenting on the DPU's petition for a declaratory ruling favor a geographic split over an overlay and also support allowing grandfathering of wireless customers when a geographic split is initiated.[242] Others favor overlays, but also support allowing grandfathering of wireless customers if a geographic split occurs.[243] Some parties assert that states should have the authority to develop and implement area code relief plans, and to determine whether to grandfather the numbers of existing wireless customers.[244] According to these parties, states should evaluate whether grandfathering is needed, with the requirement that states may not offer discriminatory solutions.[245] These parties also note that other states, such as California, Illinois, and Missouri have implemented grandfathering policies.[246] AT&T asserts that

[238] AirTouch/PowerPage Petition at 20-21.

[239] *Id.* at 22.

[240] *Id.* at 20-21.

[241] *Id.*

[242] TCG MDPU Comments at 1-4; NECTA MDPU Comments at 1-7.

[243] SWBMS MDPU Comments at 2-4.

[244] BANM MDPU Comments at 2-4; NECTA MDPU Comments at 1, 4, 7; ProNet MDPU Comments at 3. *See also* SWBMS MDPU Comments at 3-4 (favoring overlay over split but arguing that states may grandfather existing wireless customers when they adopt a geographic split plan).

[245] BANM MDPU Comments at 2-4.

[246] TCG MDPU Comments at 8; BANM MDPU Comments at 9-10; NECTA MDPU Comments at 9-10; AirTouch MDPU Comments at 5-6.

the Commission should clarify that states may not require mandatory takebacks as part of an NPA split, but at a minimum, should clarify that state commissions may rely on voluntary number givebacks, rather than requiring wireless customers to switch their numbers to the new NPA when a split plan is implemented.[247] PageNet asserts that because there is no justification for prohibiting grandfathering, requiring mandatory takebacks of wireless numbers would conflict with section 201(b) of the Communications Act.[248]

64. Parties state that allowing grandfathering for existing wireless customers will be pro-competitive because customers and companies will avoid the expense associated with reprogramming cellular handsets to accommodate a split.[249] In addition, parties argue that consumers will not be confused about the location of cellular telephone customers because existing wireless customers are mobile and do not have a fixed geographic base.[250] AT&T notes that, without grandfathering, some wireless customers will be forced to change their NPAs and their 7-digit numbers if a takeback of numbers is ordered. If the wireless carrier cannot obtain a NXX in the new NPA that is identical to the NXX assigned to it in the old NPA, wireless customers reassigned to the new NPA could be forced to change their NXX as well as their area code.[251] Commenters also state that there is no technical reason to force wireless customers to change their numbers.[252] SWBMS argues that states should not be precluded under a guise of "technology-blind" area code relief from decreasing the burdens associated with area code relief for some carriers while not increasing the burden on any other customer or carrier. SWBMS also argues that states should implement options, such as grandfathering, that lessen the burdens for some while not disadvantaging others.[253] Further, SWBMS states that voluntary grandfathering allows states to let

[247] AT&T MDPU Comments at 2.

[248] PageNet MDPU Comments at 4.

[249] TCG MDPU Comments at 1; BANM MDPU Comments at 7-9; NECTA MDPU Comments at 11-12; SWBMS MDPU Comments at 5; AT&T MDPU Comments at 3; AirTouch MDPU Comments at 3; PageNet MDPU Comments at 2-3.

[250] TCG MDPU Comments at 1-2; NECTA MDPU Comments at 12; SWBMS MDPU Comments at 7-9; AT&T MDPU Comments at 3; PageNet MDPU Comments at 2.

[251] AT&T MDPU Comments at 4.

[252] PageNet MDPU Comments at 3-4. Voluntary conversion of Type 2 numbers is likely to lead to a level of number relief comparable to what would occur with a mandatory takeback of those numbers. *See also* AT&T MDPU Comments at 5-6 (a system of voluntary give-backs can be an effective part of NPA relief efforts because customers in the new NPA with wireless and wireline telephones will choose to change their wireless area codes to avoid confusion).

[253] SWBMS MDPU Comments at 4; *see also* PageNet MDPU Comments at 7 (grandfathering does not harm any

customers decide whether the old or new area code best suits their needs.[254] NECTA states that the class of grandfathered customers could be drawn narrowly to focus specifically on the customers facing the heaviest burdens without grandfathering.[255]

65. SWBMS also argues that the methods for returning wireless numbers in the absence of grandfathering are impractical. First, if numbers are returned based on the billing address, the same group of consumers is burdened twice. Most wireless customers also have wireline telephones. SWBMS asserts that it does not make sense to tell a wireline customer whose NPA is changing that he will be additionally burdened by having a new NPA for his wireless telephone.[256] Also, SWBMS states that because the NPA boundary lines are based on wireline exchange boundaries and numbers out of wireless NXXs are not assigned to a specific geographic area, wireless carriers have customers on both sides of the NPA boundary. Therefore, returning wireless numbers based on the billing address will not "empty" any NXXs and therefore does not contribute to NPA relief.[257] Second, SWBMS maintains that it would be "arbitrary" to mandate that wireless carriers return a set number of NXXs.[258] Third, SWBMS argues that returning NXXs based on the location of the tandem or the end office results in an "all or nothing" situation. Whether the particular tandem is within the old or the new area code will be critical in determining how many of the wireless carriers' customers have to change numbers, and could result in a competitive disadvantage if the carriers are not taking their blocks from the same tandem. Also, often the local exchange company may use the same tandem to support the old and new area codes.[259]

66. BANM argues that grandfathering does not create discrimination against a particular service and that the concerns raised by the overlay area code relief plans considered in the *Ameritech* decision and the *Local Competition Second Report and Order* are not present with grandfathering because both wireless and wireline customers would share the new and old area codes.[260] NECTA

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other segment of the industry); AT&T MDPU Comments at 2 (a technologically neutral policy is commendable, but inherent differences between wireline and wireless telephones make treating them in the same manner unfair).

[254] *Id.* at 11.

[255] NECTA MDPU Comments at 12-13.

[256] SWBMS MDPU Comments at 10; *see also* AirTouch MDPU Comments at 8.

[257] *Id.*

[258] *Id.*

[259] *Id.*

[260] *Id.* at 5-6; *see also* PageNet MDPU Comments at 6. PageNet asserts that allowing grandfathering is consistent

agrees that grandfathering of wireless numbers does not result in an overlay and that the plan does not violate the *Local Competition Second Report and Order*[261] because NPAs are not limited to a single form of telecommunications technology or service under the grandfathering plan. SWBMS states that 10-digit dialing should not be required because grandfathering will not confer a competitive advantage that any group must overcome.[262] SWBMS adds that, practically, 10-digit dialing will be required for all calls between area codes.[263] To require 10-digit dialing for other calls would merely create unnecessary burdens.[264]

67. Some parties oppose grandfathering of existing wireless customers. NYNEX supports an all-services area code overlay and argues that grandfathering of wireless numbers in a geographic split plan is equivalent to an overlay (because the new NPA would be "overlaid" by wireless customers retaining the old area code) and therefore requires 10-digit dialing.[265] Also, NYNEX argues that the overlay is a service-specific overlay because only existing wireless customers would be allowed to retain their existing 10-digit numbers with the old area code. NYNEX asserts that if a service-specific overlay approach were adopted, either: (1) wireline customers that share Type 1 NXXs with wireless customers would retain the existing area code along with the wireless customers; or (2) wireline customers that share Type 1 NXXs with wireless customers would undergo a 10-digit number change to remove them from the affected NXX. NYNEX maintains that neither option is palatable.[266] NYNEX and TPI also assert that grandfathering would create customer confusion.[267] Sprint argues that allowing grandfathering gives wireless carriers an advantage because customers will be unlikely to change carriers if they are

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with the Commission's pro-competitive goals. Under a geographic split plan permitting grandfathering, new entrants will still have access to old and new numbers on a first come, first served basis, and no carriers will be forced to compete only with the less familiar numbers.

[261] NECTA MDPU Comments at 8.

[262] SWBMS MDPU Comments at 13.

[263] *Id.*

[264] SWBMS MDPU Comments at 13; *see also* AT&T MDPU Comments at 6; AirTouch MDPU Comments at 7-8; PageNet MDPU Comments at 6-7 (since grandfathering does not harm competition, there is no reason to impose 10-digit dialing); PageNet MDPU Comments at 3-4 (no 10-digit dialing required in a geographic split plan).

[265] NYNEX MDPU Comments at 3; *see also* Sprint MDPU Comments at 2-3.

[266] *Id.* at 4.

[267] *Id.* at 5.

allowed to retain their NPA.[268]

68. We deny petitioners' requests for reconsideration of our decision in the *Local Competition Second Report and Order* not to prohibit takebacks of wireless numbers. Further, we are not considering petitions filed regarding issues raised in this docket concerning the Texas area code relief plan. Subsequent actions by the Texas Commission have rendered these issues moot.[269] We understand commenters' concerns regarding the burdens associated with reprogramming wireless equipment. We also recognize that our decision to leave this implementation detail to state commissions could result in some wireless number changes that are not technically necessary. We continue to believe, however, that, under these circumstances, states are best equipped to determine how the burdens associated with area code relief are most equitably distributed among various telecommunications services providers operating within their borders.[270] That determination would include whether takebacks of wireless numbers should occur. State commissions may also implement voluntary wireless number give-backs or grandfather wireless numbers, subject to certain guidelines specified below, if they find from their examination of the particular local circumstances that to do so will equitably distribute the burdens of area code relief.[271] As we stated in the *Local Competition Second Report and Order*, our goal is to have technology-blind area code relief that does not burden or favor a particular technology. We emphasize that, although we have delegated authority to states to implement new area codes, state commissions must implement area code relief plans that are consistent with the goal of technology-blind area code relief, the guidelines set out in the *Ameritech Order*, and our area code relief regulations as defined in the *Local Competition Second Report and Order*.[272] Parties alleging that a particular area code relief plan discriminates unreasonably against a particular industry segment, or otherwise is inconsistent with our guidelines and regulations, may file a petition for declaratory ruling with the Commission under section 1.2 of

[268] Sprint MDPU Comments at 2.

[269] The Texas Commission ultimately determined not to institute any wireless-only overlays, did not require wireless takebacks, and affirmed its prior determination regarding the area code relief plans for the Dallas and Houston areas, *see Remand of the Commission's Decision in Docket No. 14447,* Docket No. 16910, February 6, 1997. This docket is not the proper forum for comments concerning other issues decided in that order by the Texas Commission. Such issues should be brought before the Texas Commission.

[270] *Local Competition Second Report and Order*, 11 FCC Rcd at 19512 ¶ 272.

[271] Factors that states might consider include the number of wireless customers affected, the location of wireless customers, and the type of interconnection the wireless carriers are using.

[272] *Local Competition Second Report and Order*, 11 FCC Rcd at 19516-19 ¶¶ 281-289.

our rules.[273]

69. We will not disturb the DPU's decision to allow grandfathering of Type 2 wireless numbers. We have delegated authority to the states to implement new area codes, and this particular implementation detail is best left to the state commissions. State commissions are better situated than we are to determine what type of area code relief should occur and precisely how it should be implemented in a particular state. As noted above, state commissions should craft area code relief plans, including the treatment of wireless numbers, with the goal of equitably distributing the burdens associated with area code relief over all segments of the telecommunications industry. The record in this proceeding indicates that grandfathering is most feasible for Type 2 numbers because the sharing of NXX codes between wireless and wireline carriers with Type 1 interconnection creates technical difficulties with grandfathering Type 1 numbers. Therefore, the following discussion refers only to Type 2 numbers.

70. Grandfathering wireless numbers raises concerns about its possible negative impact on number conservation. Because the rate of NXX code assignments directly correlates to the rate of area code changes, we must balance the need to maintain efficient administration of numbering resources against the goal of equitable distribution of the burdens within area code relief plans. If state commissions allow wireless carriers to grandfather numbers of existing wireless customers in a geographic split, they must also allow the carriers to continue assigning unused numbers from the old NPA-NXX (i.e., numbers from the "grandfathered" NXXs). Permitting wireless carriers to continue to assign numbers to new customers out of NXX codes in the old NPA avoids the prospect of leaving numbering resources stranded in the grandfathered NXX code. Wireless carriers should fully use these numbering resources prior to obtaining additional numbering resources from the new NPA.

71. We recognize that allowing wireless grandfathering results in the functional equivalent of a service-specific overlay in the new NPA.[274] The overlay, however, is limited to existing wireless customers in the new NPA, plus any additional new wireless customers that may "fill up" the grandfathered wireless NXXs. This limitation reduces the competitive concerns associated with a technology-specific overlay. State commissions should, however, consider those competitive concerns when crafting area code relief plans, and balance them against the convenience wireless carriers gain through grandfathering of wireless numbers. We emphasize again that burdens associated with area code relief should be equitably distributed among all segments of the telecommunications industry.

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[273] 47 C.F.R. § 1.2.

[274] We have announced our intent to reexamine the prohibition against technology-specific overlays in the *Numbering Resource Optimization Notice*, at ¶¶ 256-261.

B. Discriminatory NXX Code Opening ChargesB. Discriminatory NXX Code Opening ChargesB. Discriminatory NXX Code Opening Charges

1. *Background*

72. We observed, in the *Local Competition Second Report and Order,* that charging different "code opening" fees for different providers or categories of providers of telephone exchange service violates the section 251(b)(3) nondiscrimination requirement and the section 202(a) prohibition of unreasonable discrimination.[275] In addition, we concluded that charging different "code opening" fees constitutes an "unjust practice" and "unjust charge" under section 201(b).[276] Further, we found the practice inconsistent with the principle stated in section 251(e)(1) that numbers are to be available on an equitable basis.[277] We also stated that incumbent LECs must treat other carriers as the incumbent LECs would treat themselves. We therefore extended the prohibition against LECs charging discriminatory fees for numbering to cover charges to paging companies.[278]

[275] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a); *Local Competition Second Report and Order*, 11 FCC Rcd at 19537 ¶ 332.

[276] 47 U.S.C. § 201(b); *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 332.

[277] 47 U.S.C. § 251(e)(1); *Local Competition Second Report and Order*, 11 FCC Rcd at 1958 ¶ 332.

[278] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333.

2. *Discussion*

73. AT&T, AirTouch, PageNet, TCG, and PCIA allege that incumbent LECs serving as code administrators charge widely varying NXX code[279] opening fees.[280] These parties request that the Commission limit such fees to forward-looking costs that would be borne by any neutral third party acting as numbering administrator.[281] TCG and BellSouth report that code assignment charges are assessed by NXX code administrators to recover the administrative costs of physically processing NXX code assignment requests and assigning NXXs to carriers.[282] AT&T and TCG assert that incumbent LECs should not charge carriers receiving NXX codes for costs that incumbent LECs incur to route traffic to new NXX codes because every carrier that interconnects with the LEC to which the new NXX is assigned must also modify its own network switches to recognize the new code.[283] Agreeing, BellSouth advises that it does not intend to charge other carriers for "code opening" costs that BellSouth incurs to modify its network to recognize new or modified NXX codes.[284] BellSouth, however, contends that the Commission should state that LECs can recover costs incurred to maintain numbering information in the Routing Data Base System (RDBS) and Bellcore Rating Input Database System (BRIDS) and for assuming Administrative Operating Company Number responsibilities.[285] GTE states that it does not charge other carriers for the hardware and software required to open a new NXX but rather charges other carriers only the actual costs it incurs to "cover the administrative costs of adding new capacity."[286]

74. AT&T further urges us to require that incumbent LECs charge themselves retroactively for every NXX code that they have previously allocated to themselves at the same rate that they have charged their competitors for the distribution of NXXs.[287] BellSouth asserts that the

[279] NXX codes are defined *supra* at ¶ 5.

[280] AT&T Petition at 10-11; AirTouch Opposition at 13-14; PageNet Opposition at 9; TCG Opposition at 10-11; PCIA Opposition at 7-8.

[281] *Id.*

[282] BellSouth Reply 2-3; TCG Opposition at 10.

[283] AT&T Petition at 11; TCG Opposition at 11.

[284] BellSouth Reply at 5.

[285] BellSouth Petition at 9; BellSouth Reply at 4-5.

[286] GTE Opposition at 16.

[287] *Id.*

Commission does not have the authority to apply such a regulation on a retroactive basis and requests that the Commission deny AT&T's request.[288] PTG also seeks to deny AT&T's proposal noting that section 251(e) of the Act establishes that telecommunications numbering administration costs should be borne by all telecommunications carriers on a competitively neutral basis and should not be allocated on costs to a hypothetical third party.[289] U S WEST contends that costs associated with opening a new NXX code should be assessed to the carrier seeking assignment of the new code while costs associated with code administration should be levied uniformly upon all code users through a general administration fee.[290]

75. Certain parties state that incumbent LECs are assessing unreasonable, unjust, or discriminatory charges for functions associated with NXX code administration.[291] Noting that wireless carriers utilize numbers that require Type 1 or Type 2 interconnection, Arch contends that many LECs charge wireless carriers exorbitant fees to issue and maintain numbers. Because Type 2 numbers reside in the switch of the wireless carrier, and because LECs do not maintain those numbers, Arch maintains that LECs incur no costs to justify their charges. In addition Arch argues that, although LECs must input Type 1 numbers into their switch software, these costs are *de minimis*.[292] AirTouch compares the rates charged to open NXX codes in different NPAs and argues that incumbent LECs seem to base code opening fees upon market demand for NXXs and not administrative costs. In support of this argument, AirTouch observes that Pacific Bell charged AirTouch $9,400 to open an NXX in the 909 NPA and $30,600 to open an NXX in the 818 NPA.[293] Arch reports that the Rochester Telephone Corporation charged it a recurring charge of $12.36 for a block of 100 numbers, a charge that Rochester Telephone states is for use of its "DID facilities."[294] Arch asserts that the charge should not be permitted because it is a "recurring charge solely for the

[288] BellSouth Opposition at 4.

[289] PTG Opposition at 5.

[290] U S WEST Opposition at 9-10.

[291] AirTouch Opposition at 13; Arch Opposition at 3; AT&T Petition at 10-11.

[292] Arch Opposition at 1-2.

[293] AirTouch Opposition at 13.

[294] Arch Opposition at 3, *citing* Letter from Rochester Telephone Corp. to Dennis M. Doyle, Arch Communications Group, Inc., dated Oct. 28, 1996. The term "DID" refers to direct inward dialing capacity. NEWTON'S TELECOM DICTIONARY, 11th Edition, at 181. DID facilities are the DID trunks through which calls are transmitted to the central office.

use of numbers."[295] AT&T requests us to ensure that incumbent LECs do not use their control over numbering resources to their own advantage.[296]

76. *Request for Additional Information.* In order to clarify petitioners' concerns about incumbent LEC NXX code charges and to specify the functions that parties associate with the terms "code assignment," "code activation," and "code opening," the Network Services Division of the Common Carrier Bureau sent requests for information (RFIs) to parties commenting on these issues and invited those parties to meet with Bureau staff. The parties subsequently filed *ex parte* comments that were included in the record of this proceeding.

77. Code Assignment The parties that responded to this request consistently stated that code assignment is performed by the incumbent LEC serving as NPA administrator. Arch recommends that the Commission describe this term as "administration of CO codes."[297] This function includes receiving and processing NXX code request forms from requesting telecommunications service providers and assigning NXXs in accordance with the *NXX Assignment Guidelines*.[298] According to AirTouch, BellSouth, TCG, GTE, SBC, and U S WEST, carriers are not generally charged for the assignment of CO codes.[299] Although LECs serving as code administrators have not historically charged carriers for these CO code administration services,

[295] Arch Opposition at 3.

[296] AT&T Petition at 10.

[297] *See* Letter from Dennis M. Doyle, Arch, to William F. Caton, FCC, dated August 22, 1997 (Arch August 22 ex parte), at 3.

[298] *See* Letter from Kathleen Q. Abernathy, AirTouch, to Renee Alexander, FCC, dated August 26, 1997 (AirTouch August 26 ex parte), at 2; Arch August 22 ex parte at 3; Letter from Frank S. Simone, AT&T, to William F. Caton, FCC, dated August 20, 1997 (AT&T August 20 ex parte), at 3-4; Response to Request for Information from M. Robert Sutherland and Theodore R. Kingsley, BellSouth, dated August 19, 1997 (BellSouth August 19 ex parte), at 4-5; Letter from Christine M. Crowe, PCIA, to William F. Caton, FCC, dated August 22, 1997 (PCIA August 22 ex parte), at 2; Letter from Link Brown, SBC, to William F. Caton, FCC, dated August 22, 1997 (SBC August 22 ex parte), at 2; Letter from Judith E. Herrman, TCG, to William F. Caton, FCC, dated August 22, 1997 (TCG August 22 ex parte), at 1; Letter from Robert H. Jackson, U S WEST, to William F. Caton, FCC, dated August 13, 1997 (U S WEST August 13 ex parte), at 1; *CO Code Guidelines* at 7-9.

[299] AirTouch August 26 ex parte at 4; BellSouth August 19 ex parte at 5; TCG August 22 ex parte at 1. GTE does not charge fees for any of the CO code assignment areas in Florida and Hawaii that it administers. *See* Letter from W. Scott Randolph, GTE, to William F. Caton, FCC, dated August 21, 1997 (GTE August 21 ex parte), at 2. SBC states that it does not charge any fees to carriers for CO code assignment. SBC August 22 ex parte at 2. U S WEST does not charge any carrier a fee in connection with code assignment functions. U S WEST August 13 ex parte at 2.

BellSouth declares that these costs are "clearly recoverable" as the Commission has determined in the *Local Competition Second Report and Order* that incumbent LECs may charge carriers fees for NXX code assignment as long as one uniform fee is charged for all carriers and the 1996 amendments to the Act provide that the costs of number administration shall be borne by all carriers on a competitively neutral basis.[300] AT&T asserts that code assignment is a record-keeping function for which charges should be *de minimis*.[301] Arch asserts, however, that SNET continues to charge $189.00 for each CO code it assigns in Connecticut.[302]

78. Code Activation U S WEST agrees that code activation includes update of the Bellcore Traffic Routing Administration databases, RDBS and BRIDS, to include new NXX information, although it prefers to use the term "notification of CO codes."[303] BellSouth, AT&T, and Arch state that the terms code activation and code opening are generally used interchangeably within the telecommunications industry.[304] BellSouth reports that carriers may enter the NXX information into the Bellcore databases themselves, or they may negotiate with another company to perform this function on their behalf.[305] SWBT charges $110.00 when it performs the data entry function for other entities.[306] The BRIDS products are used for toll message rating purposes while the RDBS products are used for traffic routing purposes in the public switched telephone network.[307] BellSouth and TCG note that entities are assessed recurring annual charges for record space maintained in the Bellcore databases for each NXX activated by a carrier.[308] GTE and U S WEST assert that they do not charge fees for code activation functions in the areas where they serve as CO

[300] BellSouth August 19 ex parte at 5-6, *citing* the *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

[301] AT&T August 20 ex parte at 2.

[302] Arch August 22 ex parte at 5.

[303] U S WEST August 13 ex parte at 2.

[304] Arch August 22 ex parte at 4; AT&T August 20 ex parte at 2; BellSouth August 19 ex parte at 8.

[305] BellSouth August 19 ex parte at 8.

[306] SBC August 22 ex parte at 3.

[307] BellSouth August 19 ex parte at 8. The RDBS database contains routing information and is used to produce the Local Exchange Routing Guide (LERG). The BRIDS database contains rating information and is used to produce the Terminating Point Master (TPM). *See NXX Assignment Guidelines* at 3.

[308] BellSouth August 19 ex parte at 8; TCG August 22 ex parte at 2.

administrator.[309]

79. Code Opening AT&T, BellSouth, PCIA, GTE, and TCG generally describe code opening as including the functions that each telecommunications service provider utilizes to update the translation tables in its switches with routing information contained in the Local Exchange Routing Guide (LERG) and to modify other portions of its network to recognize the new or modified NXX data.[310] AT&T states that translation table updates and other system modifications are an essential component of providing telecommunications services, and that without such updates the customers of a telecommunications carrier would not be able to complete calls to the new NXX.[311] AT&T deems these expenses "a cost of doing business" and asserts that carriers have historically not sought to recover costs associated with modifying their own systems to recognize new NXXs.[312] TCG and U S WEST state that they neither charge nor are charged by other carriers for code opening functions.[313] Arch states that all incumbent LEC code administrators have stopped the practice of charging Arch for opening or activating NXX codes for Type 2 interconnection.[314] PCIA, however, states that its members continue to be assessed varying charges by incumbent LECs for CO code activation, CO code opening, and CO code "reservation."[315] According to PageNet, BellSouth charged it $8,285.00 to open an NXX code with numbers used for Type 2 interconnection; PTG charged it $30,600.00, $27,600.00, and $24,900 for three NXX codes with Type 2 numbers; and Nevada Bell charged it $2,833.33 to open an NXX code containing numbers used for Type 1 interconnection.[316] AirTouch contends that the California Public Utilities

[309] GTE August 21 ex parte at 3; U S WEST August 13 ex parte at 2.

[310] AT&T August 20 ex parte at 2; BellSouth August 19 ex parte at 11; PCIA August 22 ex parte at 6-7; GTE August 21 ex parte at 1, 4; TCG August 22 ex parte at 2.

[311] AT&T August 20 ex parte at 2.

[312] *Id.* at 3.

[313] TCG August 22 ex parte at 2-3; U S WEST August 13 ex parte at 2.

[314] Arch August 22 ex parte at 6.

[315] PCIA August 22 ex parte at 8. Reserved CO codes (NXX codes) are codes that have been identified and set aside by the Code Administrator for some specific use or purpose. The reserved NXX code is not available for assignment but neither has it been officially assigned by the Code Administrator to an entity. *CO Code Guidelines* at 30. Recently, in the *Numbering Resource Optimization Notice*, we sought comment on whether time limits should be imposed on the amount of time a code may be held in reserved status. *Numbering Resource Optimization Notice* at ¶ 49.

[316] Letter from Edward A. Yorkgitis, PageNet, to William F. Caton, FCC, dated September 3, 1997 (PageNet

Commission found that "no explicit charge should be imposed on carriers for the costs of opening NXX codes."[317]

80. At the outset, we conclude that, even though the LECs no longer perform code assignment functions,[318] they do continue to perform some code activation and code opening functions. LECs also continue to allocate their own numbers to some paging carriers. Thus, petitions for reconsideration and clarification concerning LEC charges for numbers are still relevant.

81. Initially, we clarify the meanings of the terms code assignment, code activation, and code opening, and the functions associated with each term. Code assignment is the collection, processing, and assignment of NXXs to requesting telecommunications service providers in accordance with the *CO Code Guidelines*. Code activation is the entry of code assignment information in the BRIDS, the RDBS, and other databases; the maintenance of code assignment information in these databases; and the publication of routing and routing information in output databases including the LERG and the Terminating Point Master (TPM) for distribution to telecommunications service providers. Telcordia Technologies (previously Bellcore) maintains these databases.[319] Code opening is the updating of translation tables, certain switches, and other network elements by each entity interconnecting with the public switched telephone network (PSTN) to allow that entity to route telephone calls and process rate information within its own network.

82. After considering the information provided by the petitioners, we clarify that charging different fees to different providers or categories of providers of telephone exchange service for code assignment, code activation, or code opening violates the Act's section 251(b)(3) nondiscrimination requirement and the Act's section 202(a) prohibition against unreasonable discrimination.[320] The Act's prohibitions against those practices by LECs extends to all

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September 3 ex parte), at Attachment 1.

[317] AirTouch August 26 ex parte at 5 n. 4*, citing Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Opinion,* R. 95-04-044 (Cal. PUC December 20, 1996).

[318] *See* ¶ 5, *supra,* for a discussion of the selection of Lockheed Martin IMS as the NANPA.

[319] *See id.*, n.32 for a discussion of Bellcore and its acquisition by Science Applications International Corporation (SAIC).

[320] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a); *see Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

telecommunications common carriers, including paging carriers, because all telecommunications common carriers are to be treated equitably, and on a competitively neutral basis.[321] This protection also applies to all fees and functions associated with NXXs, including the assignment of telephone numbers.[322] We find that any LEC charging competing carriers fees for code assignment, code activation, or code opening can do so only if the LEC charges one uniform fee for all carriers, including itself and its affiliates. Such fees must be just and reasonable as required by sections 201(b) and 251(e) of the Act.[323] We also find that AT&T has not demonstrated that its request that incumbent LECs charge themselves retroactively for every NXX code that they have previously allocated to themselves serves any identifiable public interest under the Act. Accordingly, we deny its request that we require such retroactive repayment.

83. In the *Local Competition Second Report and Order* the Commission concluded that the term "nondiscriminatory access to telephone numbers" meant that a LEC providing telephone numbers must permit competing providers to have access to those numbers that is identical to the access that the LEC provides to itself.[324] We, further, found that telephone companies could not impose recurring charges solely for the use of telephone numbers.[325] In the *Spectrum Order*, we concluded that carriers do not own NXX codes or numbers but rather administer the distribution of these numbers for the efficient operation of the PSTN.[326] This analysis led us to conclude that cellular telephone companies are entitled to reasonable accommodation of their numbering requirements.[327] We also found that telephone companies could impose a reasonable initial connection charge upon cellular carriers as compensation for costs of software updates and other changes associated with the provision of new numbers.[328]

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[321] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333; 47 U.S.C. § 251(e).

[322] NXXs can be comprised of Type 1 or Type 2 numbers. NXXs that are comprised of Type 1 numbers may contain wireless and wireline numbers and thus implicate issues involving, for example, sharing of NXXs by two or more carriers. We emphasize here that charges for partial or full NXXs with Type 1 numbers must be reasonable and must be assessed in a nondiscriminatory manner.

[323] 47 U.S.C. §§ 201(b) and 251(e).

[324] *Local Competition Second Report and Order*, 11 FCC Rcd at 19446-47 ¶ 106.

[325] *Id.* at 19538, citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 R.R. 2d 1275, 1284 (1986) (*Spectrum Order*).

[326] *Spectrum Order*, 59 R.R. 2d at 1284.

[327] *Id.*

[328] *Id.*

84. Some carriers allege that they continue to be charged recurring fees solely for the use of numbers and unreasonable fees for initial connection costs associated with assigning blocks of Type 1 and Type 2 numbers in violation of the *Local Competition Second Report and Order* and the *Spectrum Order*. Although transfer of CO code assignment functions to the NANPA has rendered allegations of LEC discriminatory charges for CO code assignment moot, we affirm that where LECs provide CO code activation services, charging different CO code activation fees for different providers or categories of providers of telephone exchange service continues to constitute a violation of section 202(a).[329] In addition we note that any fees charged for CO code activation also must be just and reasonable, as required by section 201(b) of the Act.[330]

85. In addition, because the code opening process[331] involves reciprocal obligations among carriers pursuant to section 251(a) of the Act,[332] LECs may not charge CO code opening fees. AT&T's contention that expenses associated with code opening are a cost of doing business that mutually benefits all entities utilizing the PSTN and are essential to the ongoing "interconnectiveness" of the telecommunications network is correct. We affirm our finding in the *Local Competition Second Report and Order* that charging different code opening fees for different providers or categories of providers of telephone exchange service constitutes discriminatory access to telephone numbers, and thus violates section 251(b)(3) of the Act. Moreover, we conclude that it also constitutes unjust and unreasonable discrimination in charges that also violates section 202(b) of the Act.[333] Specifically, we conclude that no charges may be assessed for the opening of partial or full NXXs that contain Type 1 or Type 2 numbers. Pursuant to section 201(b) and 202 of the Act, we explicitly extend this protection to all telecommunications common carriers, including paging carriers.

86. Following the dispute resolution process we have adopted for other types of 251(b)(3) nondiscriminatory access issues,[334] we require that, if a dispute arises under section 201(b)

[329] 47 U.S.C. § 202(a).

[330] 47 U.S.C. § 201(b).

[331] *See supra* ¶ 79 for a description of the code opening process.

[332] 47 U.S.C. § 251(a). "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

[333] 47 U.S.C. §§ 251(b)(3), 202(b); *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

[334] *Local Competition Second Report and Order*, 11 FCC Rcd at 19450-51 ¶¶ 114-116.

of the Act between a LEC providing access to telephone numbers and a competing provider concerning fees for such access, the burden of proof is upon the providing LEC to demonstrate with specificity: (1) that it has provided nondiscriminatory access to telephone numbers, and (2) that the levying of discriminatory or unreasonable charges for CO code assignment or CO code activation are not caused by factors within the control of the providing LEC. We now authorize state regulatory commissions to resolve disputes involving fees charged for the activation of CO codes, including the assignment and activation of numbers,[335] to the extent that these commissions act in a manner that is consistent with our guidelines.

C. Paging and "Telephone Exchange Service"C. Paging and "Telephone Exchange Service"C. Paging and "Telephone Exchange Service"

1. *Background*

87. In the *Local Competition Second Report and Order*, the Commission stated that "[p]aging is not 'telephone exchange service' within the meaning of the Act because it is neither 'intercommunicating service of the character ordinarily furnished by a single exchange' nor 'comparable' to such service."[336] As support, the Commission cited section 153(47) of the Act,[337] which states:

> The term 'telephone exchange service' means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[338]

The Commission concluded that paging is not telephone exchange service as part of the analysis of

[335] Because NXXs that contain wireless Type 1 numbers and wireline numbers implicate number sharing issues and we lack sufficient record to decide such matters, we do not specifically address petitioners' concerns regarding fees for Type 1 numbers. We emphasize, however, that charges for Type 1 numbers cannot be unjust, unreasonable, or discriminatory.

[336] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333, n.700.

[337] 47 U.S.C. § 3(47).

[338] *Id.*

whether the protections of section 251(b)(3)[339] from discriminatory NXX code opening fees applied to paging carriers.[340] The Commission noted that although paging carriers were not entitled to section 251(b)(3) protection from discriminatory code opening fees, they were increasingly competing with other CMRS providers and would be at an unfair competitive disadvantage if they alone could be charged discriminatory code activation fees.[341] We also concluded that Sections 201 and 202 of the Communications Act prohibited incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers, including paging carriers.[342]

[339] 47 U.S.C. § 251(b)(3).

[340] *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-39 ¶¶ 332-335.

[341] *Id.* at 19538 ¶ 333.

[342] *Id.* at 19537-37 ¶¶ 332-334.

2. *Discussion*

88. Several parties contend that paging is telephone exchange service and request the Commission to reconsider its decision in this regard. AirTouch contends that the Commission's conclusion that CMRS paging is not telephone exchange service places paging carriers at a competitive disadvantage vis-a-vis other CMRS providers that provide CMRS paging service in conjunction with their primary service offerings and thus enjoy telephone exchange provider status.[343] AirTouch and PageNet claim that the Commission and different courts have found that CMRS paging companies provide telephone exchange service,[344] and that the Commission's conclusion that paging is not telephone exchange service is not supported by the Act. According to these parties, the 1996 amendments to the Act did not promulgate a narrower definition of telephone exchange service than the 1934 Act; rather, the amendments broadened the definition to include section 153(47)(B) services and functions that are "comparable" to those provided by telephone exchange service providers.[345] In AirTouch's view, the expanded definition includes new technologies and network configurations.[346] AirTouch argues that it is insignificant that CMRS paging service does not constitute an "intercommunicating" service, because one-way CMRS paging service enables reciprocal communications, and real-time interactive two-way voice communication is not required to meet the statutory definition contained in section 3(47).[347]

89. PageNet contends that the reference in section 153(47)(B) to origination and termination of telecommunications services does not preclude paging carriers from meeting the definition of telephone exchange carriers. PageNet states that in construing the phrase "telephone exchange service and exchange access," the Commission interpreted "and" to mean either "and" or "or" so that incumbent LECs must provide interconnection for purposes of transmitting and routing

[343] AirTouch Petition at 9. AirTouch notes that the Commission concluded that the obligation to provide dialing parity and the duty to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings pursuant to section 251(b)(3) runs to providers of telephone exchange service and telephone toll service. *Id.* at 7.

[344] *Id.* at 10-12, *citing Public Notice*, 1 FCC 2d 830 (1965); *Tariffs for Mobile Service*, 53 FCC 2d 579 (Common Carrier Bureau 1975); *Cellular Interconnection*, 63 RR 2d 7, 17 (1987); *United States v. Western Electric Co.*, 578 F. Supp. 643, 645 (D.D.C. 1983). *See also* PageNet Petition at 8; AirTouch Reply at 9; PCIA Reply at 4; PageNet Reply at 3.

[345] AirTouch Petition at 12-13; PageNet Petition at 8; PageNet Opposition at 8; PCIA Reply at 4.

[346] AirTouch Petition at 13.

[347] AirTouch Petition at 13-14*; see also* PageNet Petition at 9; PCIA Opposition at 6.

telephone traffic or exchange access traffic or both.[348] PageNet states that the Commission did so to be consistent with the language of the statute and Congressional intent to foster competition in the local exchange market.[349] PageNet argues that a contrary interpretation would arguably release LECs from the obligation to provide services in a nondiscriminatory fashion to cellular, PCS, SMR, and paging.[350]

90. USTA disagrees with the paging-company commenters and maintains that paging services do not fall within the Act's definition of "telephone exchange service" because paging service is not comparable to two-way, switched voice service.[351]

91. We decline at this time to reconsider our decision in the *Local Competition Second Report and Order* that paging carriers do not provide telephone exchange service as described in section 153(47) of the Act. We have already ordered that such companies shall not be charged discriminatory NXX code opening fees; accordingly, the question whether paging carriers provide telephone exchange service does not affect our determination of whether to extend the protection from NXX code opening fees to paging carriers. We stated in the *Local Competition Second Report and Order* that the protection from discriminatory NXX code opening fees was expressly extended to paging carriers under sections 201[352] and 202[353] of the Act.[354] Because that result would not change if we ultimately determined that paging carriers do provide telephone exchange service, reconsideration of this issue is unnecessary in the context of this order.

[348] PageNet Petition at 9, *citing Local Competition First Report and Order*, 11 FCC Rcd at 19475.

[349] *Id.*

[350] *Id.*; *see also* PageNet Opposition at 8; PageNet Reply at 2.

[351] USTA Opposition at 11-12; USTA Reply at 9.

[352] 47 U.S.C. § 201.

[353] 47 U.S.C. § 202.

[354] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶¶ 332-333.

D. D. D. Cost Recovery for Numbering AdministrationCost Recovery for Numbering AdministrationCost Recovery for Numbering Administration

1. *Background*

92. In section 251(e)(2), Congress mandated that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[355] In the *Local Competition Second Report and Order* the Commission sought to resolve any ambiguity between section 251(e)(2)'s requirement that cost recovery for number administration be borne by all telecommunications carriers on a competitively neutral basis and the language in the *NANP Order,*[356] which stated that the gross revenues of each communications provider would be used to compute each provider's contribution to the new numbering administrator.[357]

93. The Commission initially proposed that each telecommunications carrier base its contributions on the gross revenues from its provision of telecommunications services, because that approach would more equitably apportion the burden of cost recovery for numbering administration than would imposing a flat fee contribution upon all telecommunications carriers.[358] The *Local Competition Second Report and Order*, however, found that contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, the Commission required all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that had been paid to other telecommunications carriers.[359] This method is commonly referred to as the "net revenue allocator."

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[355] 47 U.S.C. § 251(e)(2).

[356] *NANP Order*, 11 FCC Rcd 2588 at 2628-29 ¶¶ 94-100.

[357] *Local Competition Second Report and Order*, 11 FCC Rcd at 19540-41 ¶¶ 342-343.

[358] *NANP Order*, 11 FCC Rcd 2588 at 2628-29 ¶¶ 94-100.

[359] 47 C.F.R. § 52.17*; Local Competition Second Report and Order*, 11 FCC Rcd at 19541 ¶ 343.

2. Discussion

94. A number of parties object to the formula for recovering the costs of numbering administration adopted in the *Local Competition Second Report and Order*, asserting that the "net revenue allocator" is not competitively neutral because it places a larger share of the costs for numbering administration on facilities-based carriers and incumbent LECs,[360] thereby disproportionately burdening those entities. Bell Atlantic states that the Commission should require each telecommunications service provider to contribute to cost recovery based upon its gross revenues.[361] SBC suggests that the Commission adopt a new method of cost allocation based upon elemental access lines (EAL).[362] Other parties propose cost allocation formulas based on retail revenues. For example, NYNEX and GTE recommend that the Commission recover numbering administration costs by placing a uniform surcharge on retail rates.[363] USTA and U S WEST argue that the Commission should base its assessments of number administration cost recovery on each carrier's gross retail revenues from telecommunications services.[364] In the alternative, U S WEST requests that the Commission allow facilities-based carriers to flow through to non-facilities-based carriers the numbering administration costs "the facilities-based carriers are assigned as a result of the revenues generated from this use of their network."[365] Lastly, BellSouth asserts that the Commission should utilize retail revenues as its standard and "require that both payments made to other carriers as well as payments received from other carriers be subtracted from gross revenues."[366]

95. AT&T and five other parties state that the Commission should not reconsider its cost allocation formula.[367] MCI states that it supports the Commission's ruling because "to require or to

[360] Ameritech Opposition at 13; BellSouth Petition at 6; NYNEX Petition at 2-3; SBC Petition at 19; USTA Petition at 5; GTE Opposition at 14; U S WEST Opposition at 3, 8.

[361] Bell Atlantic Opposition at 5-6.

[362] *See* SBC Petition at 20.

[363] GTE Opposition at 15; NYNEX Petition at 4-5.

[364] USTA Reply at 7; U S WEST Opposition at 8.

[365] U S WEST Opposition at 8.

[366] BellSouth Petition at 7.

[367] AT&T Opposition at 16-17; MCI Opposition at 7; MFS Opposition at 10; NCTA Opposition at 6; Sprint Opposition at 8-9; and TRA Opposition at 5-6.

allow the calculation to be based in part on expenditures for services such as access would effectively force MCI to pay twice for access, once in payment to incumbent LECs and a second time in the allocation of costs due to inclusion of access in retail costs."[368] MFS asserts that a surcharge based upon gross retail revenues, as urged by BellSouth, NYNEX and USTA, would be more difficult to implement because carriers often "do not have the information needed to determine which of their revenues are "retail" and which are "wholesale," because they do not always know whether a customer intends to resell the services it purchases."[369]

96. Although the Commission has recently concluded in the *Contributor Reporting Requirements Order* that the NANP cost recovery allocator should be changed from the "net revenue" allocator to the "end user" allocator,[370] LECs are required to recover costs under the "net revenue" allocator until February, 2000.[371] For the reasons below, we affirm our conclusion that the net revenues allocator is competitively neutral.

97. In section 251(e)(2), Congress granted the Commission explicit discretion to select from among competitively neutral cost recovery methodologies, discretion the Commission exercised when it chose the net revenue allocator as the cost recovery methodology for numbering administration. The net revenue allocator is competitively neutral because, when it is included in the prices of services, it will not give one service provider an appreciable, incremental cost advantage over another service provider, regardless of whether the provider is facilities-based or a non-facilities-based reseller. The net revenue allocator will distribute numbering administration costs to each carrier in proportion to net revenues (the gross revenues of both wholesale and retail services less payments to other carriers for the purchase of inputs from other telecommunications providers); thus all carriers will have to mark-up the prices of services they sell by approximately the same amounts to recover these costs. Further, the net revenue allocator is neutral because allocating numbering administration costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return. Because carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only

[368] MCI Opposition at p. 7.

[369] MFS Opposition at 9-10.

[370] *Contributor Reporting Requirements Order, supra,* n.25, at ¶¶ 59-70.

[371] *Id.* at ¶ 70.

increase as it increases its revenue stream.[372] Thus, because the net revenue allocator is competitively neutral, the Commission has satisfied the directive of section 251(e)(2), and no reconsideration of this issue is required.

98. Some commenters argue that the net revenue method is biased, because they mistakenly conclude that facilities-based carriers would not be permitted to flow through to non-facilities-based carriers the numbering administration costs that the facilities-based carriers incur. NYNEX, in particular, bases its argument against the net revenue methodology on the incorrect assumption that the Commission's rules prohibit facilities-based carriers that provide wholesale telecommunications services to non-facilities-based carriers from marking up their wholesale prices to recover numbering administration costs.[373] NYNEX admits that permitting such flow through would result in neutrality, but asserts that this is precluded by the *Local Competition Second Report and Order*. Contrary to NYNEX's assertion, nothing in the *Local Competition Second Report and Order* prohibits facilities-based providers from flowing numbering administration costs through to the non-facilities-based providers. The paragraphs in the *Local Competition First Report and Order* upon which NYNEX relies to develop its argument are inapposite because they refer to the recovery of universal service funds, not the recovery of numbering administration costs. For numbering administration cost recovery, the statutory standard for wholesale prices is the retail price less "costs that will be avoided" by selling at wholesale.[374] Numbering administration costs are legitimate costs that cannot be avoided as a result of selling at wholesale prices. Thus, facilities-based providers may recover an appropriate portion of numbering administration costs through wholesale charges for services they sell to resellers. Similarly, Commission rules present no barrier to LEC recovery of an appropriate portion of numbering administration costs through the access charges the LECs collect from IXCs. Finally, number administration is a legitimate cost that facilities-based

[372] The neutrality of the net revenue allocator is illustrated by the following example. Assume a facilities-based Carrier A sells $1 million of services to end users and $1 million to non-facilities-based Carrier B and that the cost recovery fee is 1%. Under the net revenue allocator Carrier A would collect $10,000 from its end users and $10,000 from Carrier B. If Carrier B also sells $2 million in services it would pay $10,000 in fees directly to the cost administrator and $10,000 to Carrier A who would include these costs in the price of inputs it sells to Carrier B. Carrier A then would "flow through" these fees to the number administrator. Under the net revenue allocator each carrier pays 1% of its gross revenues for number administration or $10,000 per $1 million dollars of sales. Moreover, the less gross revenue a carrier has, the less it pays in numbering administration. Thus, it is neutral with respect to size and ability to earn revenues.

[373] NYNEX Petition at 4-5, *citing Local Competition First Report and Orde*r, 11 FCC Rcd at 15506, 15861, 15868-69 ¶¶ 4-5, 713, 728-732; NYNEX Reply at 9. Ameritech, Bell Atlantic, and BellSouth generally support the NYNEX's view and argue for alternative allocation methods. Ameritech Opposition at 13; Bell Atlantic Opposition at 5; BellSouth Reply at 8.

[374] 47 U.S.C. § 252(d)(3).

providers may recover when they sell wholesale services to non-facilities-based service providers. As a consequence, there is no basis for assuming, as NYNEX and U S WEST do, that the states would not allow LECs to recover an appropriate share of numbering administration costs in their charges for unbundled network elements.[375]

99. Several of the commenting parties propose alternative allocators which they assert are superior to the net revenue method. We conclude that not all of the proposals are competitively neutral. Bell Atlantic's gross revenue approach, as we previously discussed, is not competitively neutral because it would result in double recovery. SBC's EAL allocator also appears to be non-neutral because it would treat local, intraLATA toll, and interLATA toll services equally in allocating costs. Because these services are generally priced differently, allocating costs on the basis of elemental access lines would not appear meet our definition of neutrality, since lower priced services would pay proportionately more than higher priced services. Allocating numbering costs on the basis of retail revenues or rates as Bellsouth, NYNEX, GTE, USTA, and U S WEST propose is an improvement over many of the other proposals. Nonetheless, retail revenue or rate allocation is not neutral because it excludes certain types of revenues, such as those that result when a carrier purchases telecommunications inputs for its own internal uses. Competitive neutrality requires that the allocator be as broad-based as possible, *i.e.*, applied to all sources of revenues.

[375] Many of the arguments petitioners made on reconsideration were also made before the Eighth Circuit in *California v. FCC*. Appellants argued that the Commission's cost recovery formula would violate the Act's requirement that it be competitively neutral if state commissions refused to allow LECs to flow through their numbering administration costs in the prices they charge their competitors for telecommunications services and facilities. The Court of Appeals stated that the parties appeared to agree that if they were allowed to include their numbering administration costs in the prices that the charged their competitors for telecommunications services and facilities, the cost recovery method proposed by the Commission would be valid. *California v. F.C.C.*, 124 F.3d at 943. The Court ruled that the petitioners' contentions with respect to the validity of the Commission's numbering administration cost recovery rule were speculative and therefore, not ripe for review because no state had concluded that LECs could not include numbering administration charges in the prices for services or facilities sold to other telecommunications service providers. *Id.* at 944.

3. 1998 Biennial Review - Contributor Reporting Requirements Order.

100. Although we have affirmed our conclusion in the *Local Competition Second Report and Order* that the net revenues allocator is competitively neutral, we also recognized that under our existing rules, the filing and reporting requirements associated with the cost recovery mechanism for NANP administration[376] differ from the filing and reporting requirements associated with the Telecommunications Relay Services (TRS) Fund,[377] federal universal service support mechanisms,[378] and the cost recovery mechanism for long-term local number portability (LNP) administration.[379] Prior to our adoption of the *Contributor Reporting Requirements Order*, carriers and certain other providers of telecommunications services had to satisfy these various requirements by filing different forms or worksheets, containing similar but not identical information, at different times, at different intervals, and in different locations. Accordingly, in order to lessen the regulatory burden on all telecommunications carriers, on July 14, 1999, the Commission adopted the *Contributor Reporting Requirements Order*, to consolidate and streamline these six carrier reporting requirements into one report. The *Contributor Reporting Requirements Order* concludes that, in order to include cost recovery for the administration of the North American Numbering Plan in the unified report, the NANP cost recovery allocator should be changed from the "net revenue" allocator to the equally competitively neutral "end user" allocator.[380] As we mention above, this requirement will begin in March, 2000.[381]

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[376] 47 C.F.R. §§ 52.1 *et seq.*

[377] 47 C.F.R. §§ 64.601 *et seq.*

[378] 47 C.F.R. §§ 54.1 *et seq*., 69.1 *et seq*.

[379] 47 C.F.R. §§ 52.21 *et seq.*

[380] *Contributor Reporting Requirements Order* at ¶¶ 59-70.

[381] *Id.* at ¶ 70.

IV. PROCEDURAL MATTERS IV. PROCEDURAL MATTERS IV. PROCEDURAL MATTERS

A. Regulatory Flexibility ActA. Regulatory Flexibility ActA. Regulatory Flexibility Act

101. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Notice of Proposed Rulemaking* in CC Docket No. 96-98.[382] The Commission sought written public comment on the proposals in this *NPRM*, including comment on the IRFA.[383] In addition, a Final Regulatory Flexibility Analysis was incorporated in the *Local Competition Second Report and Order*.[384] Appendix C sets forth the Supplemental Regulatory Flexibility Analysis on the *Local Competition Second Report and Order, Third Order on Reconsideration* in CC Docket No. 96-98.

B. Final Paperwork Reduction Act AnalysisB. Final Paperwork Reduction Act AnalysisB. Final Paperwork Reduction Act Analysis

102. The *Notice of Proposed Rulemaking* from which the *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission sought comment from the public and from OMB on the proposed changes.[385] This *Third Order on Reconsideration and Memorandum Opinion and Order* contains several new information collections, which have been submitted to OMB for approval. Implementation of these information collections is subject to OMB approval, as prescribed by the Paperwork Reduction Act.

V. ORDERING CLAUSESV. ORDERING CLAUSESV. ORDERING CLAUSES

103. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 1, 4(i) and (j), 201-205, 218, 220, 251 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218, 220, 251 and 403, Parts 51 and 52 ARE AMENDED as set forth in Appendix B.

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[382] *Local Competition NPRM*, n.56, *supra*, 11 FCC Rcd at 14265-66, ¶¶ 274-87.

[383] *Id.* at 14266, ¶ 286.

[384] *Local Competition Second Report and Order*, 11 FCC Rcd at 19542-60, ¶¶ 346-98.

[385] *Local Competition NPRM*, 11 FCC Rcd at 14266, ¶ 288.

104. IT IS FURTHER ORDERED that the relief requested in the petition for declaratory ruling filed by the Massachusetts Department of Public Utilities is GRANTED to the extent set forth herein.

105. IT IS FURTHER ORDERED that the petitions for reconsideration and clarification ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

106. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* including the associated Supplemental Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

107. IT IS FURTHER ORDERED, pursuant to 47 C.F.R. section 1.427, that the decisions and rules adopted herein SHALL BE EFFECTIVE thirty (30) days after publication of this *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order*, or a summary thereof, in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A - LIST OF PARTIESAPPENDIX A - LIST OF PARTIESAPPENDIX A - LIST OF PARTIES

Petitions for Reconsideration/Clarification, filed by October 7, 1996:

Airtouch Paging and PowerPage (joint comments) (Airtouch)
Ameritech
AT&T Corp. (AT&T)
Beehive Telephone Company, Inc. (Beehive)
BellSouth Corporation and BellSouth Telecommunications (BellSouth),
Cox Communications, Inc. (Cox)
Excell Agent Services, Inc. (Excell)
GTE Service Corporation GTE)
Jan David Jubon/Jubon Engineering, P.C. (Jubon)
MFS Communications Co., Inc. (MFS)
MCI Telecommunications Corp. (MCI)
New York State Dept. of Public Service (NYDPS)
NYNEX Telephone Companies (NYNEX)
Omnipoint Communications, Inc. (Omnipoint)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (PaPUC)
Rural Telephone Coalition (RTC)
SBC Communications Inc. filed on behalf of its subsidiaries, Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SWBMS) (SBC)
Teleport Communications Group, Inc. (TCG)
U.S. Telephone Association (USTA)
The Washington Post Company (Washington Post)

Oppositions, filed by November 20, 1996:

Airtouch Communications Inc. (AirTouch)
Ameritech
Arch Communications Group, Inc. (Arch)
AT&T
Bell Atlantic (Bell Atlantic)
Bell Atlantic NYNEX Mobile, Inc. (BANM)
BellSouth
Communications Venture Services, Inc. (CVS)
Cox

GTE
MCI
MFS
National Cable Television Association, Inc. (NCTA)
Public Utilities Commission of Ohio (PUCO)
Pacific Telesis Group (PTG)
PaPUC
Personal Communications Industry Association (PCIA)
Roseville Telephone Company
SBC
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Telco Planning, Inc. (Telco Planning)
Telecommunications Resellers Association (TRA)
TCG
USTA
U S WEST, Inc. (U S WEST).

Replies, filed by December 5, 1996:

Airtouch
Ameritech
AT&T
BellSouth
Cox
GTE
MCI
MFS
NYNEX
Omnipoint
Paging Network
PCIA
SBC
TCG
USTA.

Parties filing comments in response to the Massachusetts DPU Petition:

AT&T
BANM
New England Cable Television Association, Inc. (NECTA)
PageNet
ProNet, Inc. (ProNet)
Southwestern Bell Mobile Systems, Inc. (SWBMS)
TCG

Parties filing comments in response to the NYDPS Petition for Stay:

MCI Telecommunications Corporation (MCI)
Nextel Communications, Inc. (Nextel)
Bell Atlantic
Massachusetts Department of Public Utilities (DPU)

Parties filing reply comments to the NYDPS Petition for Stay:

Nextel Communications, Inc. (Nextel)
New York Department of Public Service (NYDPS)

Parties filing comments to the NYDPS Application Petition for Review:

Massachusetts Department of Public Utilities (DPU)
State of Minnesota Public Utilities Commission
State of Maine Public Utilities Commission

APPENDIX BAPPENDIX BAPPENDIX B

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Title 47 of the CFR, Part 52 is amended as follows:

PART 52 - NUMBERING

1. The authority citation for Part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Remove § 52.19(c)(3)(iii)

3. Revise § 52.19(c)(3) to read as follows:

*****

(c) (3)***

(i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and,

(ii) No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.

APPENDIX CAPPENDIX CAPPENDIX C

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in CC Docket No. 96-98.[386] The Commission sought written public comment on the proposals in this *NPRM*, including the IRFA.[387] In addition, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Local Competition Second Report and Order*. That FRFA conformed to the RFA, as amended.[388] This present Supplemental FRFA also conforms to the RFA, as amended.

1. Need for and Objectives of the Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order and the Rules Adopted Herein

2. The need for and objectives of the rule revisions adopted in the *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* are the same as those discussed in the FRFA in the *Local Competition Second Report and Order*. In general, these rules implement the Congressional goal of opening local exchange and exchange access markets to competition by eliminating certain operational barriers to competition. The Commission promulgated rules pursuant to section 251(b)(3), (c)(5), and (e)(1) of the Act in the *Local Competition Second Report and Order*. In this *Third Order on Reconsideration and Memorandum Opinion and Order*, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Local Competition Second Report and Order*.[389] We eliminate our requirement that an area code overlay plan include the assignment of at least one central office code (NXX code) to each new telecommunications service provider that had no NXX codes in the area code 90 days before introduction of the new area code. We grant the Petition for Declaratory Ruling filed by the Commonwealth of Massachusetts Department of Public Utilities to the extent that the Commission clarifies that state commissions may "take-back" or "grandfather" Type 2 wireless numbers when an area code undergoes a geographic split, subject to certain

[386] *Id.* at 14265-66, ¶¶ 274-87.

[387] *Id.* at 14266, ¶ 286.

[388] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 *et. seq*. has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[389] *See supra* at part III.

conditions. We also clarify the definitions of the terms "code assignment," "code activation," and "code opening"; find that LECs are to assess no fees for opening NXX codes; and authorize state regulatory commissions to resolve issues involving fees charged for the activation of NXX codes. Finally, we affirm that our numbering administration cost recovery formula is competitively neutral and that we will retain this method for the current funding year, but note that in a separate proceeding we have concluded that, in order to lessen the regulatory burden on all telecommunications carriers, we have consolidated and streamlined six carrier reporting requirements, including numbering administration cost recovery, into one report. In order to include cost recovery for the administration of the North American Numbering Plan in the unified report, we concluded that the NANP cost recovery allocator should be changed to be consistent with the other reporting requirements. This requirement will begin in the billing cycle beginning March 2000.

2. Summary of Significant Issues Raised in Response to the FRFA

3. In the FRFA, the Commission concluded that rules set forth in the *Local Competition Second Report and Order* would have a significant impact on a number of entities, many that could be small business concerns. The rules we adopted regarding numbering administration access apply to all LECs. These rules also affect interexchange carriers, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules.[390] Our rules apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by the rules include providers of telephone toll service, providers of telephone exchange service, independent operator services providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services.

4. We recognized that our rules might have significant economic impacts on a substantial number of small businesses. We discussed the reporting requirements imposed in the *Local Competition Second Report and Order*. Finally, we discussed the steps taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *Local Competition Second Report and Order* would benefit small entities by facilitating their entry into the local exchange and exchange access markets.

5. In the petitions for reconsideration and clarification considered in this *Third Order on Reconsideration and Memorandum Opinion and Order*, we received no argument or comment

[390] 47 C.F.R. § 90.629.

specifically directed to the FRFA. In making the determinations reflected in this *Third Order on Reconsideration and Memorandum Opinion and Order*, however, we have considered the impact of actions on small entities.[391]

3. Description and Estimate of the Number of Small Entities Affected by this Second Order on Reconsideration

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by rules.[392] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[393] The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act,[394] unless the Commission has developed one or more definitions that are appropriate to its activities.[395] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[396]

7. We have included small incumbent LECs in this Supplemental RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[397] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[398] We have therefore included small

[391] *See* section 4 of this Supplemental FRFA, *infra*.

[392] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[393] 5 U.S.C. § 601(6).

[394] 15 U.S.C. § 632.

[395] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[396] 15 U.S.C. § 632.

[397] 5 U.S.C. § 601(3).

[398] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of

incumbent LECs in this Supplemental FRFA, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[399] According to data in the most recent report, there are 3,528 interstate carriers.[400] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

9. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[401] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

10. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the

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dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[399] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[400] *Id.*

[401] 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

SBA as "small business concerns."[402]

11. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[403] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[404] For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rules, herein adopted.

[402] 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[403] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

[404] *See generally* 15 U.S.C. § 632(a)(1).

12. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[405] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[406] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rules, herein adopted.

a. *Incumbent Local Exchange Carriers*. There are two principle providers of local telephone service; ILECS and competing local service providers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). Neither the Commission nor the SBA has developed a definition specifically directed toward small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange services.[407] Although it seems certain that some of these carriers are not independently owned and operated or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of small incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

b. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services

[405] *1992 Census, supra*, at Firm Size 1-123.

[406] 13 CFR § 121.201, SIC code 4813.

[407] Federal Communications Commission, *CarrierLocator: Interstate Service Providers*, Fig. 1 (Jan. 1999) (*Carrier Locator Report*).

(IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[408] According to the most recent *Trends in Telephone Service* data, 151 carriers reported that they were engaged in the provision of interexchange services.[409] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 151 small entity IXCs that may be affected by the rules, herein adopted.

c. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[410] According to the most recent *Trends in Telephone Service* data, 147 carriers reported that they were engaged in the provision of competitive local exchange services.[411] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 147 small entity CAPs that may be affected by the rules, herein adopted.

d. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other

[408] 13 CFR § 121.201, SIC code 4813.

[409] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[410] 13 CFR 121.201, SIC code 4813.

[411] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

than radiotelephone (wireless) companies.[412] According to the most recent *Trends in Telephone Service* data, 32 carriers reported that they were engaged in the provision of operator services.[413] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 32 small entity operator service providers that may be affected by the rules, herein adopted.

[412] 13 CFR § 121.201, SIC code 4813.

[413] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

e. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[414] According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services.[415] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 509 small entity pay telephone operators that may be affected by the rules, herein adopted.

f. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[416] According to the most recent *Trends in Telephone Service* data, 358 reported that they were engaged in the resale of telephone service.[417] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 358 small entity resellers that may be affected by the rules, herein adopted.

g. *800 and 800-Like Service Subscribers.*[418] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[419] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the

[414] 13 CFR § 121.201, SIC code 4813.

[415] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[416] 13 CFR § 121.201, SIC code 4813.

[417] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[418] We include all toll-free number subscribers in this category, including 888 numbers.

[419] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the rules, herein adopted.

13. **Wireless and Commercial Mobile Services**

a. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[420] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[421] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[422] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the rules, herein adopted.

b. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small

[420] 13 CFR § 121.201, SIC code 4812.

[421] *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

[422] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

entity is a radiotelephone company employing no more than 1,500 persons.[423] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[424] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

c. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[425] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[426] The SBA has approved these definitions.[427] An auction of Phase II licenses

[423] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

[424] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[425] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997).

[426] *Id.*, 12 FCC Rcd at 11068-69, ¶ 291.

[427] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau,

commenced on September 15, 1998, and closed on October 22, 1998.[428] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[429] A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

FCC (Jan. 6, 1998).

[428] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

[429] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

d. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[430] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service* data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[431] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

e. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[432] and the most recent *Trends in Telephone Service* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services.[433] Consequently, we estimate that there are fewer than 23 small mobile service carriers that may be affected by the rules, herein adopted.

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[430] 13 CFR § 121.201, SIC code 4812.

[431] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[432] 13 CFR § 121.201, SIC code 4812.

[433] Trends in Telephone Service, Table 19.3 (February 19, 1999).

f. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[434] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[435] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[436] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[437] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

g. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

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[434] *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); *see also* 47 CFR § 24.720(b).

[435] *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, FCC 96-278, WT Docket No. 96-59, ¶ 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[436] *See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

[437] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

h. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[438] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[439] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[440] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

i. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[441] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[442] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

j. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[443] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

4. Summary Analysis of the Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this *Third Order on Reconsideration and Memorandum Opinion and Order* on Small Entities, Including the Significant Alternatives Considered and Rejected

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[438] The service is defined in Section 22.99 of the Commission's Rules, 47 CFR § 22.99.

[439] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR §§ 22.757 and 22.759.

[440] 13 CFR § 121.201, SIC code 4812.

[441] The service is defined in Section 22.99 of the Commission's Rules, 47 CFR § 22.99.

[442] 13 CFR § 121.201, SIC code 4812.

[443] 47 CFR § 90.814(b)(1).

14. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Local Competition Second Report and Order* the Commission authorized state commissions to perform the tasks of implementing new area codes subject to Commission guidelines. If a state commission chooses initiate and plan area code relief, it must inform the NANP Administrator of the functions the commission will perform. The Commission also noted that all telecommunications carriers were to contribute to the costs of establishing numbering administration. In this *Third Order on Reconsideration and Memorandum Opinion and Order* we eliminated our provision that a state commission may choose to implement an all-service area code overlay plan only when the plan included the assignment, during the 90-day period preceding the introduction of that overlay, of at least one NXX code to each new entrant telecommunications service provider.

15.. *Steps Taken to Minimize Significant Economic Impact on Small Entities*. In this *Order* we eliminated our requirement that each new entrant telecommunications service provider that has no NXXs receive at least one NXX code because we found that it created uncertainty in the area code relief planning process and might spur depletion of numbering resources. This uncertainty and depletion might have placed a significant economic and administrative burden upon small carriers, incumbent LECs, and competing service providers seeking to compete in the local telecommunications exchange market. We also have allowed wireless carriers, which may include small business entities, to grandfather numbers in the event of a geographic area code split. This gives wireless carriers more time to educate their customers. Moreover, as wireless companies must physically reprogram the telephones in the area receiving the new area code, our policy allows these companies to minimize this economic impact by allowing to forbear from this requirement. In addition, we emphasized that LECs were not to charge discriminatory fees for NXX code assignment, NXX code activation, or NXX code opening. This should benefit small entities because we believe that such fees would disproportionately burden small carriers or business entities seeking to compete with incumbent LECs and other established carriers.

5. Report to Congress

16. The Commission will send a copy of this *Third Order on Reconsideration and Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this *Third Order on Reconsideration and Memorandum Opinion and Order*, including Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Third Order on Reconsideration and Memorandum Opinion and Order* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).